

**MOSQUE DEVELOPMENT IN AMERICA'S SUBURBS:  
LESSONS FOR CONFLICT MANAGEMENT AND PUBLIC POLICY FROM THREE CASE STUDIES**

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BY  
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**KATHLEEN E. FOLEY, PHD  
CORNELL UNIVERSITY, 2012**

This dissertation asks what factors motivate and mitigate conflict around mosque developments proposed by Muslim American faith communities of immigrant origin in America's suburbs—areas which, since the early 1990s and because of emerging immigrant settlement patterns, have experienced the greatest increase in mosque development as well as the most incidents of related turmoil. Using a case study approach, the work examines the importance of traditional land use concerns in these proposals, as well as fears and biases formed in response to the post-September 11<sup>th</sup>, 2001 geopolitical climate. The study finds that the latter, although headline-catching, are not necessarily the leading motivations for resisting mosque development. Comparative analysis determines that strategies used to address and overcome exclusionary tactics mounted against low-income housing developments, mental health facilities, utilities and other locally unwanted land uses are applicable to conflict management in mosque proposals. The findings further establish the importance of proactively accommodating religious land uses in comprehensive planning exercises, and identifies the utility of the process requirements of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) as neutralizing agents in tense and emotionally-charged hearing environments. Public planners and municipal officials well-trained and experienced in conflict management and religious land use stewardship are shown to be more effective agents in mitigating conflict than those without the same skill set. For faith communities, the positive influence of careful site selection, neighborhood outreach and education efforts, interfaith coalition building and ongoing civic engagement is revealed. Additionally, the research explores the ways that conflict and negotiation in public review processes are influencing the design choices of Muslim American communities and shaping the form of the mosque in the United States.

## **BIOGRAPHICAL SKETCH**

Kathleen E. Foley received her BA in communications from Ithaca College with minor studies in art history, focused particularly on the history of Islamic architecture and urbanism. She holds an MA in historic preservation planning from Cornell University. Additionally, she is a fellow at the Institute for Social Policy and Understanding (ISPU) and a research affiliate with The Pluralism Project at Harvard University. Her doctoral studies focused on land use planning and conflict management in public processes. She is particularly interested in the civic engagement of immigrants via participation in public review processes as well as the influence of public negotiation and compromise, among other factors, on the evolution of a distinctly American form of mosque architecture.



## **DEDICATION**

This dissertation is written in memory of Joseph J. Lemak, the teacher who first introduced me to Islamic history and culture. From his classroom in isolated, rural, far-Upstate New York, the gate of the world was opened to me.

It also honors Dr. D. Fairchild Ruggles, the scholar who focused my gaze on the wonders of Islamic art, architecture and urbanism. Whenever a building takes my breath away, Dede is with me.

## **ACKNOWLEDGEMENTS**

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I have deep respect and gratitude for the participants in this research: Muslim American community leaders, members and their advocates; owners of property around the subject mosque developments; planners, municipal officials, attorneys and architects. Thank you for your insights, honesty and the time you gave so freely and generously.

To my faculty committee—Dr. Rolf J. Pendall, Dr. Shawkat M. Toorawa and Dr. Mary Norman Woods. Alas, for you I have tired clichés, but they are all so very true, and entirely apt. . .you saw the promise of an idea and nurtured it into something real and valuable; you helped and encouraged me every step of the way; you may have lost patience with me but you never lost faith; I couldn't have done it without you. I am honored and happy indeed to put this dissertation on all of our shelves and transition from being your mentee to being your colleague and friend. My infinite gratitude and admiration.

I was fortunate to have the guidance of a number of distinguished scholars who consulted on my research design. Very many thanks to Dr. Ihsan Bagby, Dr. Amaney Jamal, Dr. Akel Kahera, Dr. Aminah Beverly McCloud, Dr. Kathleen M. Moore and Dr. Suleyman Nyang. I am especially grateful to Dr. Nasser Rabbat, who helped secure my research funding from Barakat. A debt of gratitude is also due Dr. Zareena Grewal and Dr. Farid Senzai, who edited reports based on my research which evolved into dissertation chapters. Your discerning eyes vastly improved the presentation of my findings.

Dr. Tom Hanchett taught in the planning department at Cornell for one year of my MA program. Ours was a fortuitous overlap, for in his Urban History course, while studying the immigrant city, the idea for this research was born. Under his guidance I conducted a pilot study in three New York mosques in 1999. Thank you for encouraging me, Tom, and for being so excited about the report that resulted from that early investigation.

Luck struck again when GIS genius Craig Limbert moved to my village, Cold Spring, New York. Under the banner of Cardinal Rose Consulting, Craig prepared the superb maps that appear in the introduction and case study chapters of this dissertation. It was a real pleasure to work with him, and I hope we'll collaborate on many more projects to come.

My father and mother-in-law, James and Betta Hedlund, contributed generously to the costs of child care during my years of study and writing. I couldn't have finished my work without their financial and moral support. Betta also gave of her time and bag of Grandma tricks to take care of my children during several research-related trips. I am thankful—and the kiddos sure had fun!

John Hedlund, my husband. You made *everything* possible. Thank you. I love you so very much.

My children, my darlings, Josephine and Henry. You have never known Mama without her dissertation hanging over her! Josephine, you were in my belly while I transcribed recordings of public hearings in Voorhees, and then traveled there with me again as a newborn, waiting patiently with Daddy in the hotel while I conducted interviews. You were a sweet baby for Emi while I was away doing interviews in Savannah, then a frolicking toddler who kept Grandma Betta jumping while I traveled to Scottsdale. As I finish my PhD, you are preparing to start kindergarten. As you've grown you've become a most exquisite artist, and the paintings and

drawings you've made for my office have made me smile through the toughest times of my work. They are such perfect expressions of your *joie de vivre*. They make me so very happy, and have inspired me to keep on and make you proud of Mama. Thank you for that energy and love, my sweet girl.

Henry, you went to the Scottsdale desert in my belly. My boy, we were quite a sight waddling through the neighborhood around the mosque in 102 degrees—and it was only May. . . Many have been the nights that you and Sissy and Daddy slept as I wrote. Often, you wandered through the dark from your robot room to my desk, looking for a cuddle. I have loved holding you as you fell back to sleep, hearing you breathe and imagining your brain consolidating all of the life that you so happily and completely consumed during the day. Those quiet, calm moments with you made returning to my desk more bearable, and made passing the hours there less lonely. Soon you'll see that Mama does other things besides type and scribble with a red pen—I can't wait to hike more with you!

Darlings, you both are the light of my life, the joy of my days, and the energy force that buoyed me through these many years of work. It was hard for me to go up to my office to write and not spend every moment with you. I missed you both so very much. But when I did go to my work, you became two wonderfully confident, independent little people who understand that mamas can be mamas *and* think big thoughts. You are the loves of my life and I cherish you. Thank you for helping me finish "Mama's book about her buildings."

Donna Durr, you came into our lives as our nanny; now you are our dear friend, our beloved. While I was writing, you were the one who made Josephine and Henry into wonderfully confident, independent little people. Their curiosity, creativity, sense of adventure, and pure gaiety are direct reflections of the spectacular human being you are. Thank you for being the

person who, in largest part, has made their early childhoods happy. And thank you for loving my children so well.

Several dear friends have been constant sources of encouragement and support. From the bottom of my heart, I thank Carolyn Llewellyn, Evelyn Carr, Stephanie Hawkins, Andrea Latvis, Jennifer Zwarich, Heidi Treuenfels, and Jaymee Crosley Miller.

I must admit that it was really my spectacular therapist, Dr. Suzi Tortora, who saw to it that this dissertation was completed. Thank you, Suzi. . .

Finally, thanks to my cat, Lucky—constant companion, source of calm, buddy. I'll save a draft for you to sleep on. . .

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## INTRODUCTION

Stereotypically, many believe that America's suburbs consist of residents who are primarily white, native-born, middle to upper-middle class, well-educated and politically conservative.<sup>1</sup> However, the data that have emerged from the United States Decennial Censuses in 1990, 2000 and 2010, as well as the Census Bureau's intervening American Community Survey and the work of a range of scholars confirm a different reality.<sup>2</sup> America's suburbs are increasingly diverse in terms of economic advantage, race, nation of birth and citizenship status. Further, the metropolitan narrative once held that immigrants first settled in cities to establish themselves in urban enclaves and then, like their white, native-born counterparts of the mid-twentieth century, moved up and out to the suburbs to live the "good life" and the "American dream" in single-family homes, served by generous municipal services and strong school systems. For many, that pattern was indeed the case,<sup>3</sup> but, as scholars Robert Suro, Jill H. Wilson, Audrey Singer and others note, since 1990 suburban areas are serving as gateways into which immigrants

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<sup>1</sup> Michael Jones-Correa, "Re-Shaping the American Dream," page 183. Chapter nine of *The New Suburban History*, Kruse and Sugrue, editors. Chicago: The University of Chicago Press, 2006.

<sup>2</sup> See especially the following works:

Alan Berube, "The State of Metropolitan America: Suburbs and the 2010 Census." Transcript of a report delivered 7/14/2011 at a conference exploring the 2010 Census and the Suburbs. Accessed via the Brookings Institution Website 1/11/2012:

[http://www.brookings.edu/speeches/2011/0714\\_census\\_suburbs\\_berube.aspx](http://www.brookings.edu/speeches/2011/0714_census_suburbs_berube.aspx)

William H. Frey, "Melting Pot Cities and Suburbs: Racial and Ethnic Change in Metro America in the 2000s." Report published by The Brookings Institution, May 2011. Accessed 1/11/2012 via [http://www.brookings.edu/papers/2011/0504\\_census\\_ethnicity\\_frey.aspx](http://www.brookings.edu/papers/2011/0504_census_ethnicity_frey.aspx)

Kruse & Sugrue, ed. *Ibid.*

Douglass S. Massey, ed. *New Faces in New Places: The Changing Geography of American Immigration*. New York: The Russell Sage Foundation, 2008.

Audrey Singer, et al., ed. *Twenty-First Century Gateways: Immigrant Incorporation in the Suburban America*. Washington, DC: Brookings Institution Press, 2008.

Audrey M. Singer, "Immigrants in 2010 Metropolitan America: A Decade of Change." Keynote presentation to the National Immigrant Integration Conference in Seattle, Washington. Transcript dated 10/24/2011. Accessed via the website of the Brookings Institution 1/11/2012.:

[http://www.brookings.edu/speeches/2011/1024\\_immigration\\_singer.aspx](http://www.brookings.edu/speeches/2011/1024_immigration_singer.aspx)

Robert Suro, et al., "Immigration and Poverty in America's Suburbs." Report published by The Brookings Institutions, August 2011. Accessed 1/11/2012 via

[http://www.brookings.edu/papers/2011/0804\\_immigration\\_suro\\_wilson\\_singer.aspx](http://www.brookings.edu/papers/2011/0804_immigration_suro_wilson_singer.aspx)

<sup>3</sup> Jones-Correa, *op. cit.*, page 184.

settle directly.<sup>4</sup> Muslim Americans of immigrant origin are part of this suburban story. Their faith communities and the institutions they establish—as well the conflict such developments inspire—are the focus of this study.

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## AMERICA'S SUBURBS, IMMIGRANTS AND POVERTY

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To understand the current impacts of immigration on America's suburbs and the ways immigration relates to the subject of this dissertation, we must first examine some twentieth century immigration history. After the massive waves of European immigration at the end of the nineteenth century and the beginning of the twentieth, immigration declined around the World Wars. Responding to that decline, as well as other sociopolitical factors, the United States undertook immigration reforms in 1965<sup>5</sup> that abolished previous quota systems which had favored Northern European immigrants. The new laws emphasized access for those seeking family reunification, skilled employment and advanced education. America's immigrant demographics were transformed by large numbers of Southern Mediterraneans, Asians<sup>6</sup> (including Muslims from India, Pakistan, and the surrounding region), and Arabs availed themselves of opportunities in the United States. Because of the reforms, the foreign-born population in America grew steadily in the 1970s and 1980s. In the decade between 1990 and 2000 the largest numerical increase in immigrants—legal and illegal—in the nation's history was documented (31.1 million, or 11.1 percent of the US population). By 2010, another 28% increase brought the total of immigrants living in the US to nearly 40 million.<sup>7</sup> Sixty-one percent of immigrants who arrived prior to 2000 were living in America's suburbs by 2009, accounting

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<sup>4</sup> Suro, *op. cit.*, page 2.

<sup>5</sup> Hart-Celler Act, INS, Act of 1965, Pub.L. 89-236

<sup>6</sup> Jones-Correa, *op. cit.*, page 183.

<sup>7</sup> Singer, "Immigrants in 2010 Metropolitan America," *op.cit.*, page 1.



for nearly a third of the overall suburban population growth between 2000 and 2009.<sup>8</sup> Further, many of these suburbs radiate cities which prior to 1990 had not been significant receptors of immigration, thereby diversifying entire metropolitan areas.<sup>9</sup>

The booming US economy of the 1990s created an environment in which immigrants were tolerated, even welcomed in the suburbs,<sup>10</sup> and “viewed as assets to [the] labor force and society.”<sup>11</sup> That perception would change in the next decade as that nation experienced economic downturns and the force of geopolitical events. National resources and personal finances were strained by the recession of the late 1990s and the economic uncertainty that followed the attacks of September 11<sup>th</sup>, 2001.<sup>12</sup> The resulting wars on Iraq and Afghanistan further reduced consumer and investor confidence, while the housing and banking crashes of 2008-2010 and the Great Recession plunged Americans into the stresses of high unemployment, housing uncertainty, diminished savings and limited financial flexibility. The overall numbers of Americans in poverty grew in this period, but increases are most notable in the suburbs. The Brookings Institution reports that by 2008 in America’s 100 largest metropolitan areas, a majority of the poor lived in the suburbs.<sup>13</sup> The numbers of impoverished suburbanites grew by twenty-five percent in 2000-2008, to nearly a third of the nation’s poor overall.<sup>14</sup>

Native-born Americans and immigrants alike have been affected by the downturn, but immigrants have suffered a double blow. Rather than being viewed as economic assets,

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<sup>8</sup> Suro, et al., *op. cit*, page 1.

<sup>9</sup> See Frey, *op. cit* and Berube, *op. cit*.

<sup>10</sup> Singer, et al, eds., *Twenty-First Century Gateways*, *ibid*, page 3.

<sup>11</sup> Singer, “Immigrants in 2010 Metropolitan America,” *ibid*, page 4.

<sup>12</sup> Singer, et al, eds., *Twenty-First Century Gateways*, *ibid*, page 4.

<sup>13</sup> Elizabeth Kneebone and Emily Garr. “The Suburbanization of Poverty: Trends in Metropolitan America, 2000 to 2008,” Report published by The Brookings Institution, page 1. 1/10/2010. Accessed 1/12/2012 via [http://www.brookings.edu/papers/2010/0120\\_poverty\\_kneebone.aspx](http://www.brookings.edu/papers/2010/0120_poverty_kneebone.aspx)

<sup>14</sup> *Ibid*.

immigrants—legal as well as illegal and those of all economic strata—have come to be viewed as draws on the system rather than contributors. They are widely considered to be parties against whom Americans must compete for jobs and resources. Much of this sentiment has been directed at Mexican and other Central American and South American immigrants who are working in the farm, construction, domestic and other service sectors. Immigration reform has dominated national debate, and been a strong focus of the 2004 and 2008 presidential campaigns, as well as the 2006 and 2010 mid-term elections; it is re-emerging in the early days of the 2012 presidential contest, as well. Perceived deadlock over immigration at the federal level, combined with grassroots organizing against immigration, has resulted in a number of draconian actions at the state level which have had significant local repercussions, particularly in the southwest border zones and the agriculture zones of the west coast and the southeast.<sup>15</sup> New laws look to shift and bolster the administration of federal immigration laws—via employment and housing policies and the like—to local law enforcement agencies. The broad sweep of these actions results in harsh consequences for all immigrants regardless of their naturalization status or financial position.<sup>16</sup> In the suburbs, these laws burden officials already strained by the realities of general unemployment and the increased demand it creates for public services. Roberto Suro and his co-authors note that municipal governments “with little or no experience with either immigrants or poverty [are facing] complex and unfamiliar public policy challenges.”<sup>17</sup> As this dissertation will show, these challenges include questions of land use by immigrants.

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<sup>15</sup> Strong examples of harsh state responses with local consequences have been Arizona's SB 1070, passed in 2010, and Alabama's MB56, passed in 2011.

<sup>16</sup> In Alabama, two senior auto-industry executives, both working in the US legally, were arrested for MB56 violations after routine traffic stops. See: Will Oremus, “Mercedes Exec Arrested Under Alabama Immigration Law,” *Slate Magazine*, 11/21/2011. Accessed 1/31/2012 via

[http://slatest.slate.com/posts/2011/11/21/mercedes\\_benz\\_executive\\_arrested\\_under\\_alabama\\_immigration\\_law.html](http://slatest.slate.com/posts/2011/11/21/mercedes_benz_executive_arrested_under_alabama_immigration_law.html)  
Ed Pilkington, “Alabama Red-Faced as Second Foreign Car Boss Held Under Immigration Law,” *The Guardian*, 12/2/2011. Accessed 1/31/2012 via <http://www.guardian.co.uk/world/2011/dec/02/alabama-car-boss-immigration-law>

<sup>17</sup> Suro, et al, *op. cit.*, page 2.

The economic and immigration concerns of the nation since 2000 cannot be separated from the events of September 11<sup>th</sup>, 2001 and its aftermath. Much of the economy's instability can be attributed to flagging consumer and investor confidence after the terrorist attacks, as well as throughout the United States' follow-on engagement in the wars in Iraq and Afghanistan. These military actions have taken a toll on the national coffers and contributed to record-setting budget deficits. Further, because the perpetrators of the attacks were foreigners, several of whom were living in the United States under approved immigrant statuses, the public's scrutiny of immigrants as a category has heightened, and a perceptions of them as security threats have become more common. As part of this general backlash, Muslim Americans—immigrants and native-born alike—have suffered a widely documented and dramatic increase in discrimination, exclusion and hate crimes since 2001.

Scholars, the media and the general public tend to focus on September 11<sup>th</sup> as the seminal event that changed Americans' perceptions of Muslims generally and specifically of fellow citizens who are Muslim. However, the tragedy of September 11<sup>th</sup> is only the most dramatic in a series of events that shaped the nation's collective relationship to Islam through the 1980s and 1990s and amplified prejudicial and exclusionary attitudes toward Muslim Americans. The negative reception of Muslims in those decades was influenced by such events as the OPEC oil embargos of the 1970s, the 1979 Iran hostage crisis, the 1985 *Achille Lauro* hijacking, the 1989 Pan Am Flight 103 bombing, and the first World Trade Center attack in 1993. September 11<sup>th</sup> served to focus these mounting anxieties into a more organized exclusionary response to Muslim Americans. Significantly, it spawned a deliberate, nationally-networked, well-funded anti-Islam movement that has had success in formulating negative public opinion about Muslims, as well as shaping political discourse relating to Islam. Networked groups such as ACT! For

America, Stop the Islamization of America and the Tea Party have focused particularly on the compatibility of Islam with democratic society and the separation of church and state. The latter has focused on accusations that Muslim Americans wish to introduce Sharia Law into the American legal system.<sup>18</sup> The issue that seems to have gained the most traction for this movement, however, has been mosque development in America, beginning with the 2010 response to Park 51—the so-called Ground Zero mosque.

The conflict that Park 51 has stirred is extraordinary from any number of vantage points and therefore cannot be thought of a typical mosque controversy. It is better classified, perhaps, as an international cause célèbre and political vehicle used by parties across the ideological spectrum. From the perspective of land use controversies it is highly unusual. The development site is in the heart of Manhattan's financial district, a dense urban zone with a multiplicity of uses. Urban neighborhoods such as this, because of their existing diversity of uses and occupants, tend to be more tolerant of change. In fact, nearly all of the mosque conflicts documented in the last ten years, as described below, have occurred in suburban neighborhoods. At least 40% of new mosque development between 2000 and 2011 was undertaken in suburban zones,<sup>19</sup> primarily by Muslim American communities of immigrant origin:

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<sup>18</sup> An investigative report issued by the Center for American Progress in August 2011 reveals a "small, tightly networked group of misinformation experts guiding an effort that reaches millions of Americans through effective advocates, media partners, and grassroots organizing. This spreading of hate and misinformation primarily starts with five key people and their organizations, which are sustained by funding from a clutch of key foundations." Five experts, including Frank Gaffney at the Center for Security Policy; David Yerushalmi at the Society of Americans for National Existence; Daniel Pipes at the Middle East Forum; Robert Spencer of Jihad Watch and Stop Islamization of America; and Steven Emerson of the Investigative Project on Terrorism generate anti-Muslim materials that are used by politicians, grassroots groups and the media. Examples of parties who have repeated their information are U.S. politicians such as Congressman Peter King (R-NY) and Allen West (R-FL); and Islamophobic organizations such as Brigitte Gabriel's ACT! For America, Pamela Geller's Stop Islamization of America, and David Horowitz's Freedom Center. See: Wajahat Ali, et al, "Fear, Inc.: The Roots of the Islamophobia Network in America," A report issued by the Center for American Progress, August 2011. Accessed 9/9/2011 via <http://www.americanprogress.org/issues/2011/08/islamophobia.html>

<sup>19</sup> Ihsan Bagby. *The American Mosque 2011: Report I from the US Mosque Study Project 2011, Basic Characteristics of the American Mosque and Attitudes of Mosque Leaders*. Washington, DC: The Council on American Islamic Relations, January 2012, page 11. Published online at <http://www.cair.com/Portals/0/pdf/The-American-Mosque-2011-web.pdf>

faith communities whose congregants are predominantly immigrants, their children and descendants.<sup>20</sup>

Suburban mosque development controversies in 2010 and 2011—Temecula, California; Bridgewater, New Jersey; Murfreesboro, Tennessee; and Bridgeport, Connecticut are the best publicized and most commonly recognized—are in fact a continuation of resistance to mosque development that has been documented for three decades. Rising attention to such conflicts coincides with the growth of immigration in the same period, described above, as well as increasing concerns about Islam and Muslims. Considering these factors, therefore, we should expect that conflict around mosque development in the suburbs would have been the rule, not the exception, in the last two decades, and particularly since 2001. We should also expect that the conflict would have been extraordinary compared with “business as usual” in suburban development. However, the data analysis for this dissertation reveals that even in the suburbs, conflict over mosque development proposals may not be as widespread as is commonly perceived.

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#### MOSQUE DEVELOPMENT CONTROVERSIES IN CONTEXT

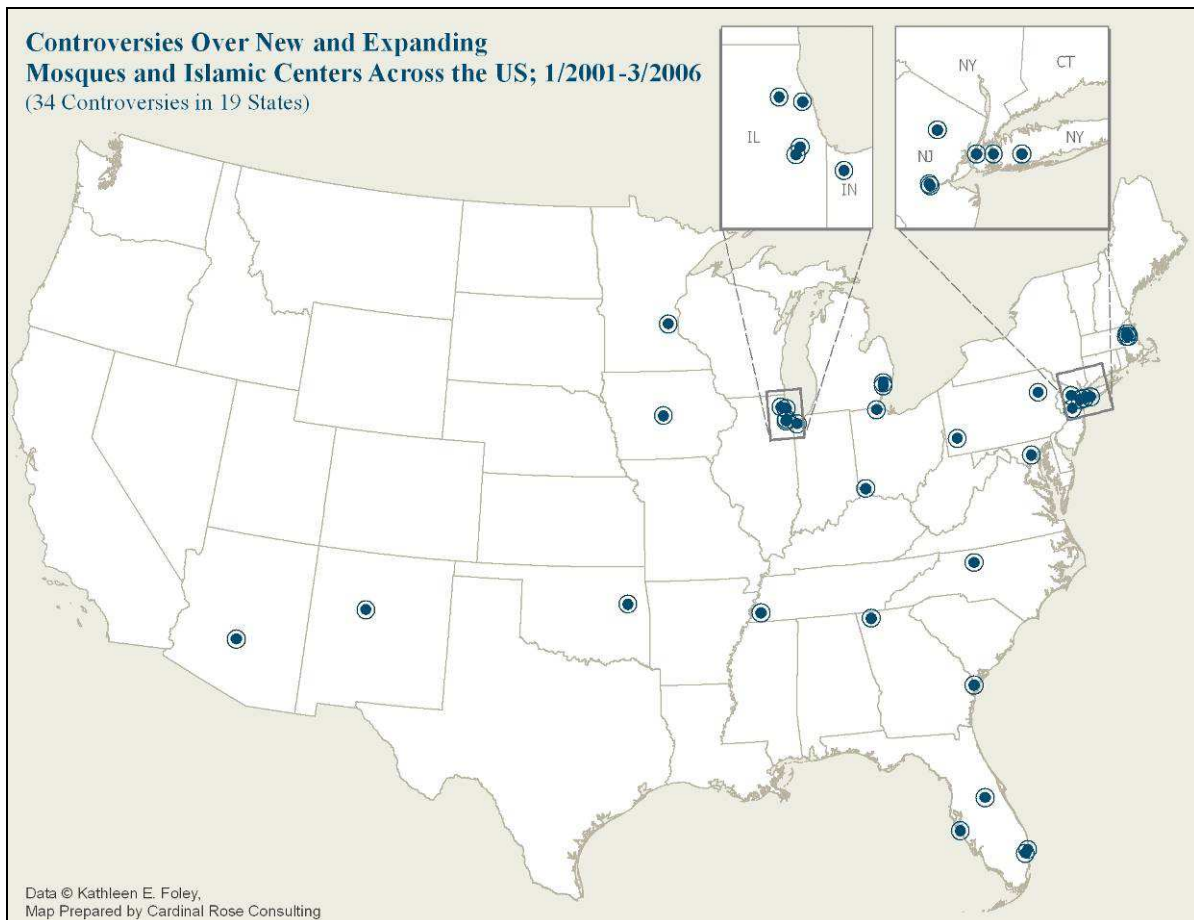
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The fervor of press coverage related to mosque development in 2010 and 2011 leaves the impression that controversy surrounding mosque development is widespread and growing. However, mosque development controversies have not increased dramatically in number since 2000. What has changed is the *intensity* of the conflicts.

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<sup>20</sup> Strangely, the children and grandchildren of immigrant Muslims are commonly referred to in the literature and the media as second and third generation immigrants. Having been born in America, they are in fact Americans. It is a problematic construct, because it perpetuates the stereotype of Muslim Americans as foreign and apart from the mainstream. It subtly communicates the idea that immigrant Muslims do not, perhaps cannot, integrate into the broader American culture.

Opposition to mosque development (as well as Islamic community centers, schools, and other related uses) has been documented since the early 1980s, when the number of proposals to establish such facilities increased to meet the needs of a growing and maturing Muslim American community (described further in Chapter I). Scholarly accounts of mosque proposals in the 1980s and 1990s are thin, with scattered references to development controversies embedded in ethnographic and related case studies of individual faith communities. A 1995 chapter by legal scholar Kathleen M. Moore, titled “There Goes the Neighborhood: Mosques in American Suburbs,”<sup>21</sup> is the single specific analysis of mosque controversies. This dissertation contributes an expanded historical context for current mosque controversies.



Map I.1 Mosque land use controversy data, January 2001-March 2006. Compiled by KE Foley.

<sup>21</sup> See Kathleen M. Moore. *Al Mughtaribun: American Law and the Transformation of Muslim Life in the United States*. Chapter Six: “There Goes the Neighborhood: Mosques in American Suburbs.” Albany: State University of New York Press, 1995.

As part of case study identification for this dissertation, I conducted an extensive review of press coverage for mosque development cases in the five years between January 2001 and March 2006. The review revealed references to conflict in 34 cases spanning 19 states (see Map I. 1). Nearly all were located in suburban municipalities.

When contrasted with recently released data from the Pew Research Center's Forum on Religion and Public Life, comparable numbers emerge for the four-year period 2008-2011 (see Map I.2). Pew reports "community resistance" to 37 proposed new and expanding mosques and Islamic Centers in 16 states; again, nearly all were in suburban municipalities.<sup>22</sup> To place these numbers in perspective, emerging data suggest that around 550 new mosques were established between 2000 and 2011, representing a 45% increase in the estimated number of mosques in the United States <sup>23</sup> By comparison, the estimated number of land use

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<sup>22</sup> Map: "Controversies Over Mosques and Islamic Centers Across the U.S." Pew Research Center's Forum on Religion and Public Life, Published online 9/29/2011 at <http://features.pewforum.org/muslim/controversies-over-mosque-and-islamic-centers-across-the-us.html?src=prc-headline>

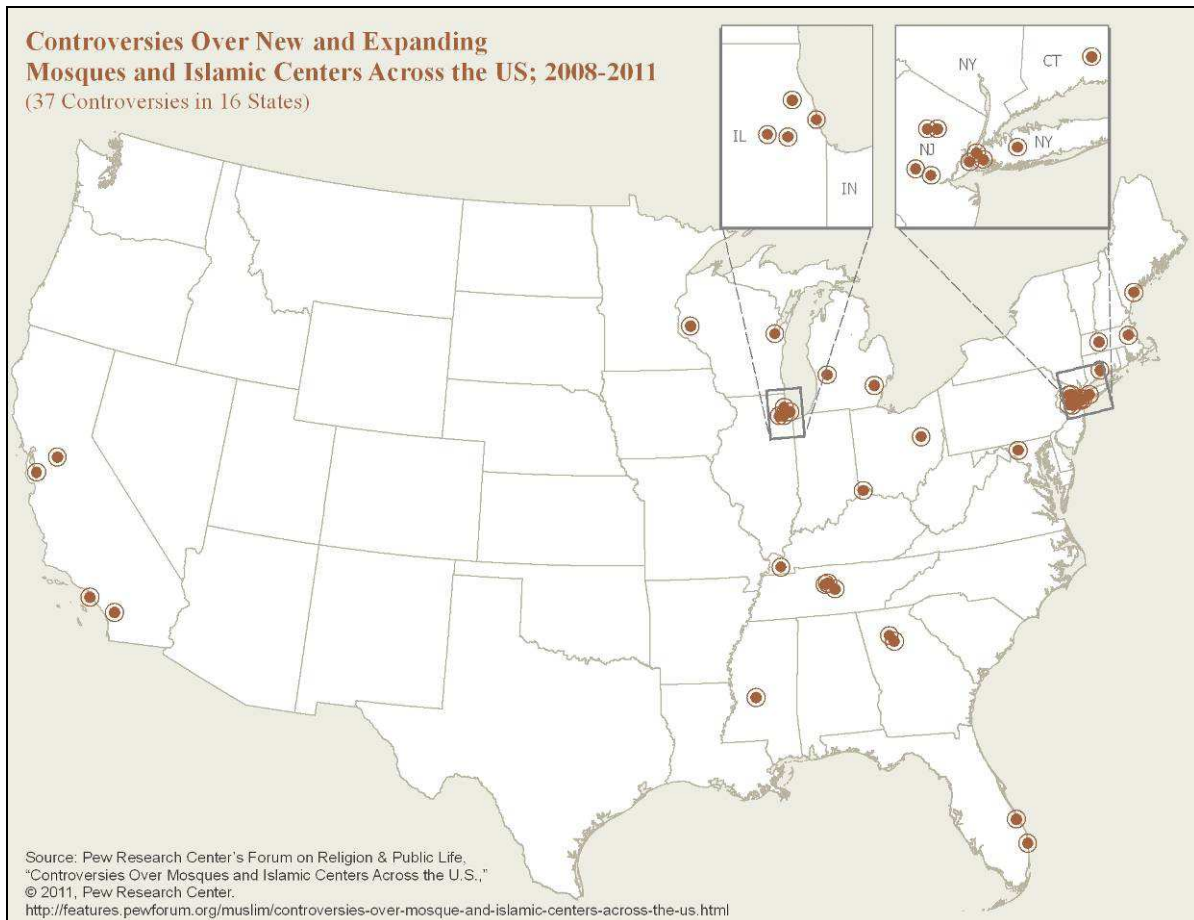
Another source commonly cited as a measure of mosque development controversies is a map produced by the American Civil Liberties Union (ACLU) in late 2011 depicting "anti-mosque activity" reported between 2005 and 2010. This data is not comparable to my data on mosque development controversies because the ACLU set includes incidents of vandalism and other criminal incidents perpetrated at existing mosques and Islamic Centers. See <http://www.aclu.org/maps/map-nationwide-anti-mosque-activity>.

<sup>23</sup> The number of 547 new mosques between 2000 and 2011 is a conservative estimate I derived based on data reported in a January 2012 report on the basic characteristics of American mosques, published by Ihsan Bagby. The report is an update of a similar study Bagby published in 2001. However, several strong caveats must be considered for the 2012 report. It provides the overall count of mosques in America of 2,106 and reports that this number represents a 74% increase in the number of mosques since 2000. Seventy-four percent was determined by calculating the percent change between this 2011 total (2,106) and Bagby's 2000 total for US mosques(1,209). However, because of methodological issues relating to data collection, it appears that the 2011 total count consists of three categories of mosques: (a) those extant in 2000 which were included in the 2000 count; (b) those extant in 2000 but not included in the 2000 count; and (c) mosques that were founded in the decade 2000-2011. The second category, mosques extant in 2000 but not included in the 2000 count, are included in the 74% calculation, thereby inflating the percent increase for the decade. My calculation of 547 new mosques, therefore, is derived using the only reliable data point the report provides for mosque development in the decade: that 26% of all the mosques studied [in the survey] were established from 2000 to 2011 (see report page 5). Twenty-six percent of the total mosques surveyed for the report (2,106) is 547. That number represents a 45% change over the number of mosques identified in the Bagby's 2000 survey. See:

Bagby, *op. cit*, page 5.

Ihsan Bagby, et al. *The Mosque in America: An National Portrait, A Report from the National Mosque Study Project*. Washington, DC: The Council on American Islamic Relations, 2001. Published online at [http://www.cair.com/Portals/0/pdf/The\\_Mosque\\_in\\_America\\_A\\_National\\_Portrait.pdf](http://www.cair.com/Portals/0/pdf/The_Mosque_in_America_A_National_Portrait.pdf)

controversies surrounding new and expanding mosques and Islamic Centers in the decade, is small indeed—less than 15%.<sup>24</sup>



*Map I.2 Mosque land use controversy data, 2008-2011. Compiled by the Pew Research Center's Forum on Religion and Public Life.*

To assess the intensity of the cases I identified, I analyzed the press coverage for reasons neighbors, municipal officials and Muslim community representatives cited for resistance. My analysis was supplemented by the rich data I gathered while investigating potential case study mosque developments and then conducting my studies of the communities I did select. What emerged was an evolution of tactics, described below, used to oppose new mosque

<sup>24</sup> Derived by combining my data (34 cases) with the Pew data (36 cases) and calculating those cases as a percent of my estimate of 547 new mosque developments, 2000-2011.



construction, as well as an intensification of the resistance launched by surrounding community members and, in some cases, municipal officials.

Prior to Park 51, conflicts over mosque development in American cities and suburbs were local affairs that rarely garnered attention beyond the municipalities in which they were proposed. Opponents tended to focus their critiques on such land use issues as parking, traffic, and noise, even if those stated reasons veiled their true intent to exclude Muslims from the neighborhood. Zoning and planning boards frequently yielded to public pressure and denied necessary permits. As a result, Muslim American communities often spent years searching for developments sites before finally succeeding. In fact, it was not unusual for them to settle for parcels that were undesirable but more likely to be approved, or to make considerable compromises on their original plans.

The tragedy and trauma of the September 11<sup>th</sup> 2001 attacks heightened the scrutiny of mosque proposals across the nation and influenced opposition strategies. In the years immediately following the attacks, the true emotions of some opponents were more freely expressed in public hearings—fears about terrorism and the role of mosques in terrorist training were openly invoked to justify opposition to mosque projects and call into question the civil rights of Muslim Americans to develop real estate for worship purposes. Such topics dominated many hours of public sessions across the country, despite their irrelevance to land use reviews. Sophisticated opponents, however, understood that review boards could not deny necessary approvals on the basis of fear and bias and thus employed the language of land use to mask exclusionary desires.

Certainly, legitimate land use concerns have been at the core of many cases since September 11th. But addressing these issues productively amidst the din of anger and suspicion has been

challenging for even the most seasoned review board members. Often, municipal officials and lay board members are dealing with levels of conflict they have never experienced and for which they are not trained or prepared. Yet even in this maelstrom, most mosque proposals made in the last decade were eventually approved for construction. Fortuitously, in 2000 Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA),<sup>25</sup> thereby creating a safer climate in which to propose religious property developments of all kinds and reaffirming the first amendment protections for the free exercise of religion. When lawsuits have been the only remedy for contentious mosque proposals, RLUIPA has helped ensure their approval.<sup>26</sup> This legislation will be discussed more fully in the literature review and successive chapters.

Still, resistance to mosque proposals over the last decade was tame by comparison to what is transpiring in the wake of Park 51. Protest took place for the most part in the controlled environment of public sessions and within the framework of public debate—Muslim American applicants had the opportunity to respond to accusations and counter speculation with facts. Now, however, a vocal and organized opposition is leading street protests, shaping public opinion through national media coverage and bringing lawsuits that both attempt to block local proposals and challenge the constitutionality of RLUIPA.<sup>27</sup> What once might have been local land use controversies are now being portrayed as issues of national and international significance, and are being used popularly as proxies for a number of more complex struggles commonly reduced to simple dichotomies: Islam versus the West, Islamic versus Judeo-Christian culture and the culture wars between “red” and “blue” America.

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<sup>25</sup> Pub. L. No. 106-274, 114 Stat. 803-807, codified at 42 U.S.C. § 2000cc to 2000cc-5.

<sup>26</sup> For an analysis of outcomes for religious land use claimants under RLUIPA, particularly as compared with previous federal legal regimes, see: “Religious Land Use in the Federal Courts under RLUIPA,” *Harvard Law Review*. June 2007, Volume 120 Issue 8, pages 2178-2199.

<sup>27</sup> In one of the most covered cases of 2010-2011, opponents of a new mosque in Murfreesboro, Tennessee, sued Rutherford County, arguing that it should not have granted planning permissions to the Islamic Center of Murfreesboro because Islam is not a recognized religion and therefore not eligible to constitutional protections. With support from an amicus brief from the Department of Justice that cited RLUIPA, the County Planning Board’s decision was upheld and allowed the development to proceed. See: Jamie Gumbrecht, “Embattled Tennessee Mosque to Move Forward With Construction.” Published on [cnn.com](http://religion.blogs.cnn.com/2011/09/02/embattled-tennessee-mosque-to-move-forward-with-construction/) 09/02/2011. Accessed 02/07/2012 via <http://religion.blogs.cnn.com/2011/09/02/embattled-tennessee-mosque-to-move-forward-with-construction/>

The ongoing debate over mosques has taken place without the benefit of context that deep, careful academic scrutiny of conflicts might offer. This dissertation's in-depth analysis of three suburban mosque developments proposed within eighteen months of the September 11<sup>th</sup>, 2001 attacks—arguably the most tumultuous period for mosque development prior to Park 51—helps to fill the void. It reaches beyond media hyperbole to discover actual levels of controversy in mosque development proposals, root causes of conflict, and successful strategies for managing and resolving tensions. More broadly, it considers the lessons that mosque controversies hold for land use conflict generally; for engaging immigrants in American civic and political life via public review processes; and for community building in America's diversifying suburbs.

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#### **OUTLINE OF THE DISSERTATION**

The work begins by framing the research within the pertinent literature. As background, I provide demographic data on Muslims in America, in particular examining the faith community's growth and arrival in the suburbs. I then contextualize my study within relative literatures. Chapter II presents the study's research questions and the hypotheses based on them. Chapter III describes the case study methodology employed in the research. The three case studies are recounted and analyzed in chapters IV-VI. A synthetic analysis follows in chapter VII, relating the findings of the case studies back to the hypotheses and the overarching research questions. The next two chapters contain the work's key contribution—practical recommendations for the management of conflict in mosque review processes; implications for municipal officials and land use planners (chapter VIII), and, for faith communities (chapter IX). In the conclusion, my work's contribution to, and significant expansion of, the fields of land use planning, immigrant assimilation and Islamic architectural theory are described and proposals are made for potential continuing research based on my findings.

# **CHAPTER I**

## **LITERATURE REVIEW AND INTELLECTUAL CONTEXT FOR THE DISSERTATION**

This chapter contextualizes the research presented in this dissertation within relevant literatures. In Part I, the demographics of Muslim Americans are presented, followed by the history of their arrival in the United States, their settlement and their ongoing integration into the cultural, social and civic spheres of American life. Particular focus is given to the suburbanization of Muslim Americans of immigrant origin, as well as the local institutions they establish for their faith communities. Part II reviews research on the worship, social and community outreach activities that take place within mosques and Islamic Centers in the United States, as well as design approaches that accommodate those uses. A primer on land use regulation is presented in Part III; the two primary functions of land use regulation—separation/exclusion of uses and impact mitigation—are presented, along with an explanation of the constitutional constraints on those regulations. Finally, a description and analysis is offered for the most significant law pertaining to the regulation of religious land uses in America, the Religious Land Use and Institutionalized Persons Act of 2000 (aka RLUIPA).

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### **PART I: MUSLIMS IN AMERICA**

#### ***A Demographic Sketch***

Because the United States Census does not collect information pertaining to religious affiliation, it can be difficult to ascertain basic demographic data on members of particular faiths. The estimated number Muslims in America varies widely depending on sources and statistical

methods, and ranges from one and a half to seven million;<sup>28</sup> most are considered “educated approximations, at best.”<sup>29</sup> The most comprehensive and reliable demographic data on Muslims in America currently available was collected using widely accepted social scientific methods in two nationwide surveys. They were conducted under the auspices of the Pew Research Center in 2007<sup>30</sup> and 2011.<sup>31</sup> Pew reports that in 2011 there were approximately 1.8 million Muslim adults and 2.75 Muslims of all ages living in the United States.<sup>32</sup> Sixty-three percent of Muslims living in America that year were born abroad, and, reflecting the immigration increases described in the introduction of this dissertation, 71% arrived after 1990.<sup>33</sup> Of the 37% of Muslims who were born in America, 15% have at least one parent who was born outside the US.<sup>34</sup> Together, immigrant and native-born Muslims constitute a racially diverse faith community. The Pew data demonstrates that no single racial or ethnic group makes up more than a third of the total. When considering the Muslim American population overall, 30% percent describe themselves as white, 23% as black, 21% as Asian, 6% as Hispanic, and 19% as other

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<sup>28</sup> See, among others:

Ihsan Bagby. *The American Mosque 2011: Report I from the US Mosque Study Project 2011, Basic Characteristics of the American Mosque and Attitudes of Mosque Leaders*. Washington, DC: The Council on American Islamic Relations, January 2012, pages 4. Published online at <http://www.cair.com/Portals/0/pdf/The-American-Mosque-2011-web.pdf>.

Ihsan Bagby, et. al. *The Mosque in America: A National Portrait (A Report from the Mosque Study Project)*. Washington: The Council on American-Islamic Relations, 2001. Page 3. Published online at <http://www.cair-net.org/mosquereport/>.

Ilyas Ba-Yunis and M. Moin Siddiqui. *A Report on Muslim Population in the United States*. New York: Center for American Muslim Research and Information, 1998, page 20-24.

Yvonne Yazbeck Haddad and Adair T. Lummis, *Islamic Values in the United States: A Comparative Study*. New York: Oxford University Press, 1987, page 3.

Tom W. Smith. “The Polls—Review: The Muslims Population of the United States: The Methodology of Estimates,” *Public Opinion Quarterly*, Volume 66: 404-417.

Carol I. Stone, “Estimate of Muslims Living in America,” Chapter 2 of *The Muslims of America*, Yvonne, Yazbeck Haddad, ed. New York: Oxford University Press, 1991, pages 25-36.

<sup>29</sup> Pew Research Center, “Muslim Americans: Middle Class and Mostly Mainstream.” Washington, DC: Pew Research Center, 2007, page 9 Published online and accessed 6/10/2010 via <http://pewresearch.org/pubs/483/muslim-americans>.

<sup>30</sup> *Ibid.*

<sup>31</sup> Pew Research Center. “Muslims Americans: No Signs of Growth in Alienation or Support for Extremism” (A Nationwide Survey of Muslim Americans). Washington, DC: Pew Research Center, 2011. Published online and accessed 2/20/2012 via <http://pewresearch.org/pubs/2087/muslim-americans-islamic-extremism-911-attacks-mosques>. [sic].

<sup>32</sup> *Ibid*, page 20.

<sup>33</sup> *Ibid*, pages 13-14.

<sup>34</sup> *Ibid*, page 15.

or mixed race.<sup>35</sup> Foreign born Muslim Americans, whose faith communities are the focus of this research, come from nearly 80 different nations. Pakistan is the largest country of origin (14% of first-generation immigrants; 9% of all Muslim Americans). In terms of regions of origin, the largest number of immigrant Muslims in America come from Arab countries in the Middle East and North Africa (41% of foreign born Muslims in the United States; 26% of all Muslim Americans), followed by those from South Asia—India, Pakistan, Afghanistan and Bangladesh (26% of foreign born Muslims in the United States; 16% of all Muslim Americans). Muslim immigrants from all parts of the globe, Pew found, have naturalized at very high rates; more than 70% of those born abroad are now citizens, including 42% of those who arrived after the year 2000.<sup>36</sup>

A high rate of naturalization is only one statistic which led Pew to characterize the Muslim American population as “middle class and mostly mainstream.”<sup>37</sup> In many aspects, the Muslim American community is comparable to America’s general population. Twenty six percent of Muslim Americans have graduated from college, as compared to 28% of all adults in the United States. Forty percent report family incomes between \$30,000 and \$100,000, in contrast to 48% of the general public. About a third of Muslim Americans are homeowners, compared with 58% of the public (for both groups, homeownership has declined following the 2006-2009 collapse of the US housing market and subsequent recession).<sup>38</sup> Pew found Muslim Americans to be well-integrated into American society and in large part content with their lives in the US, as well as in their local communities. This is true even among Muslims living in communities which have experienced acts of violence against a mosque or controversy over the building of an Islamic Center. Fifty-six percent also reported being content with the direction in which the country is

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<sup>35</sup> *Ibid*, page 16.

<sup>36</sup> *Ibid*, page 14. Pew reports that 99% of Muslim immigrants who arrived in the US before 1980 have naturalized, as have 95% of those who arrived between 1980 and 1990, and 80% of those who arrived between 1990 and 1999.

<sup>37</sup> This language is used in the title of Pew’s 2007 survey report, and is echoed again in its 2011 survey report on page 6.

<sup>38</sup> Pew 2011, *op. cit.*, pages 17-18.

going, a striking contrast to the 32% of the general public.<sup>39</sup> Similar findings were reported by the Gallup Center in its August 2011 survey of Muslim Americans.<sup>40</sup>

Pew characterizes Muslim Americans as “religious but not dogmatic.” Sixty-five percent identify themselves with Sunni Islam, one of the two main branches of the faith, and 11% identify with the second, Shia Islam (most of the balance identify as having no specific affiliation). Twenty percent of Muslims in the US are converts to Islam. Most Muslims see religion as very important in their lives (69%) and about half attend religious services at least once a week.<sup>41</sup> Importantly, the Gallup Center found that Muslim Americans who attend religious services at least once a week have “higher levels of civic engagement and report less stress and anger than do other US Muslims who attend religious services less frequently.”<sup>42</sup> This finding counters concerns expressed in recent years regarding the radicalization of Muslim Americans via mosque attendance.<sup>43</sup> In fact, both Pew and Gallup found that very few Muslim Americans see any justification for violence and reject extremism and attacks on civilians.<sup>44</sup>

Despite high levels of social integration and increasing civic engagement, Gallup reports that Muslim Americans are the least likely members of any major religious group to be registered to vote.<sup>45</sup> Pew reports that about 66% of Muslim Americans say they are registered, and 64% said they voted in the 2008 presidential election. Among the general public these numbers are 79%

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<sup>39</sup> *Ibid*, pages 37-38.

<sup>40</sup> The Abu Dhabi Gallup Center. *Muslim Americans: Faith, Freedom, and the Future: Examining U.S. Muslims' Political, Social, and Spiritual Engagement Ten Years After September 11*. Published online at <http://www.abudhabigallupcenter.com/148772/REPORT-Muslim-Americans-Faith-Freedom-Future.aspx>

<sup>41</sup> Pew 2011, *op. cit.*, pages 23-28.

<sup>42</sup> Gallup, *op. cit.*, page 6.

<sup>43</sup> In 2011, concerns over radicalization among Muslim American were intensified by congressional hearings on the subject led by Homeland Security Committee chair Peter T. King, (R) NY. See: Sheryl Gay Stolberg and Laurie Goodstein, “Domestic Terrorism Hearing Opens with Contrasting Views on Dangers,” *The New York Times*, 3/10/2011. Accessed via <http://www.nytimes.com/2011/03/11/us/politics/11king.html>.

<sup>44</sup> Gallup, *op. cit.*, page 6 and Pew 2011, *op. cit.*, page 1.

<sup>45</sup> Gallup, *op. cit.*, page 5.

and 76% respectively.<sup>46</sup> Still, more than 90% of mosque leaders interviewed by Ihsan Bagby agreed that Muslims should be involved in American institutions and American politics;<sup>47</sup> 70% of Pew's respondents said they follow government and public affairs. Muslim Americans "align strongly" with the Democratic party and report that they would prefer a "bigger government" that "provides more services." On social issues such as homosexuality and gay marriage, they take more conservative positions. Perhaps the best measure of the civic engagement and integration of Muslim Americans, however, is found in this statistic from Pew: a third report having "worked with other people in their neighborhood over the past year to fix a problem or improve a condition in their community."<sup>48</sup> This statistic will be illustrated in this dissertation's case studies.

### ***Important Considerations Regarding the Scholarship on Islam in America***

It is informative to compare the recent data presented above, as well as other ongoing scholarship on Muslim Americans' attitudes toward civic and political engagement,<sup>49</sup> with earlier documentation of Muslims in America. It is apparent that in the previous three decades the faith community, and particularly its immigrant majority, has integrated to an impressive degree into American society and culture. Current studies are documenting a general acceptance among Muslim Americans of the necessity to engage the broader culture on any number of levels. In the 1980s and 1990s, qualitative researchers such as Yvonne Haddad, Jane Smith, John Esposito, Khaled Abou El Fadl and others recorded internal community debates regarding whether it was Islamically appropriate to participate to any degree in the social, professional, economic and political structures of American society.<sup>50</sup> These same scholars and others also

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<sup>46</sup> Pew 2011, *op. cit.*, page 56.

<sup>47</sup> Bagby, 2012, *op. cit.*, pages 20-21.

<sup>48</sup> Pew 2011, *op. cit.*, page 57-58.

<sup>49</sup> See particularly the writings of Amaney Jamal, M.A. Muqtedar Khan, and Tariq Ramadan, among others.

<sup>50</sup> See especially:

Yvonne Yazbeck Haddad, editor. *Muslims in the West: From Sojourners to Citizens*. New York: Oxford University Press, 2002.

Yvonne Yazbeck Haddad and John L. Esposito, editors. *Muslims on the Americanization Path?*. Atlanta: Scholars Press, 1998.

Haddad and Lummis, 1987, *op. cit.*.



began the recording of the history of Islam in America in earnest; it is the subject of this chapter's next section.

It is important to acknowledge that there is a long-standing racial divide in the scholarship on Islam in America. African American Muslims and immigrant-origin Muslims are commonly treated as separate entities in the literature. It is true that differences in African American and immigrant Muslim history, socioeconomic circumstances and geographic locations pose challenges for the analysis of American Islam as a single entity. This dichotomy, of course, does not even acknowledge the stories of White, Latino and other converts to the faith in America. As a result, the field tends to write segregated histories and conduct segregated analysis. This is particularly true currently, given the national attention on immigration issues and geopolitical events involving Muslims and Islam. Researchers such as Edward Curtis<sup>51</sup> are attempting to reveal a more inclusive history of Islam in America and demonstrate the continuum of the faith's presence from the earliest days of the nation to the present, and among African Americans and immigrant Muslim Americans alike.

This dissertation's particular examination of faith communities of immigrant origin, however, is less about purposefully narrowing focus to a single Muslim American constituency and more about the simple realities of which constituency is developing mosques at a faster rate, and where. The greatest growth in mosque development since 1996 has occurred in America's suburbs,<sup>52</sup> and these areas are experiencing the highest number of incidents of development

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Yvonne Yazbeck Haddad and Jane Idleman Smith, editors. *Muslim Communities in North America*. Albany: State University of New York Press. 1994.

Jane I. Smith. *Islam in America*. New York: Columbia University Press, 1999.

<sup>51</sup> See particularly Edward E. Curtis, IV. *Muslims in America: A Short History*. New York: Oxford University Press, 2009.

<sup>52</sup> Bagby, 2001, *op. cit.*, page 3 and Bagby, 2012, *op. cit.*, page 10.

opposition.<sup>53</sup> And, given that the suburbs are home to more immigrant-origin Muslims than African American Muslims,<sup>54</sup> it stands to reason that immigrant-origin faith communities are facing the greatest opposition to their development proposals. To prepare for my inquiries into suburban faith communities, however, I undertook studies of Islam in America as a whole, and particularly focused on the mosque development patterns of different constituencies. The chapter sections that follow provide summary histories of the two largest constituencies in American Islam—African American Muslims and Muslim Americans of immigrant origin—and describes the circumstances that have led to each to develop religious institutions in different kinds of urban and suburban districts.

### ***African American Muslims and the Urban Mosque***

African Americans are a significant demographic in American Islam. In 2011, 40% of native born Muslim Americans described themselves as black.<sup>55</sup> Some scholars assert that African Muslims were among the first non-Native peoples on the American continent, having crewed Spanish and Portuguese explorers' ships. Jane I. Smith notes that little documentary evidence exists to support the claim,<sup>56</sup> but Allan Austin, Sylviane A. Diouf and others have found archival evidence to support the arrival of Muslims on sea vessels of another sort—slave ships—as well as the clandestine practice of Islam among enslaved Africans.<sup>57</sup> Few, however, were able to retain

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<sup>53</sup> As discussed in the introduction, this assertion is borne out in my own tracking of press coverage related to mosque controversies between 2000 and 2005, as well as data collected by the Pew Forum on Religion and Public Life between 2008 and 2011. See: "Controversies Over Mosques and Islamic Centers Across the United States," <http://features.pewforum.org/muslim/controversies-over-mosque-and-islamic-centers-across-the-us.html?src=prc-headline>. Accessed 2/19/2012.

<sup>54</sup> The geographic segregation of African American Muslim communities and immigrant-origin communities is supported by the ethnicity and location data collected by Bagby in his 2001 mosque survey. See pages 17-19 and 26. Analyses of 2010 US Census data describing the suburbanization of immigrants, addressed in this work's introduction, also support the assertion that immigrant-origin Muslim American communities are more frequently located in suburban districts.

<sup>55</sup> Pew 2011, *op. cit.*, page 16.

<sup>56</sup> This assertion is plausible—the Iberian Peninsula was under Arab rule for nearly 800 years prior to Columbus's expeditions to the New World. Further, it does stand to reason that Iberian adherents to Islam would have made their way to the new world after the expulsion of Muslims and Jews in the Inquisition of 1492. Smith, *op. cit.*, pages 50-51.

<sup>57</sup> Many of the African nations from which humans were kidnapped for trade were dominantly Muslim, and their faith was imported to plantations with them. Re-examinations of slavery archives have revealed that Islam was practiced in secret, despite forced conversions of captives to Christianity. Accounts of Arabic-speaking and writing laborers have

their Muslim faith under the regime of slavery and forced conversions to Christianity. As a result, orthodox Islam did not figure strongly in African American history until later in the twentieth century. Until that time, according to historians such as Yvonne Haddad,<sup>58</sup> Ernest Allen,<sup>59</sup> Steven Barboza,<sup>60</sup> Edward Curtis<sup>61</sup> and Martha Lee,<sup>62</sup> Islam was adopted by Black Nationalist movements, including the Moorish Science Temple and the Nation of Islam (NOI). The interpretations of Islam made by these groups had little in common with the tenets and practice of the orthodox faith. Still, their teachings formed the basis for a collective identity that offered an alternative to the racism and economic oppression African Americans experienced from the broader society. This group identity was retained when, in the mid-1970s, a large contingent of NOI adherents converted to Sunni Islam with leader Warith Deen Muhammad.<sup>63</sup> Other African Americans have come directly to Sunni Islam from Christianity, different faiths and no religious affiliation.<sup>64</sup> Conversion while in prison has been an important pathway for African American men to Islam, according to Dannin, Feddes and others.<sup>65</sup>

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been found, and Qur'ans used by slaves have been discovered in historical collections in Virginia and Georgia. See: Sylviane A. Diouf. *Servants of Allah: African Muslims Enslaved in the Americas*. New York: New York University Press, 1998; and Allan Austin, *African Muslims in Antebellum America: A Sourcebook*. New York: Garland Publishing Inc., 1984.

<sup>58</sup> Yvonne Yazbeck Haddad, "A Century of Islam in America," *The Muslim World Today*, Occasional Paper No. 4. Washington: American Institute for Islamic Affairs, 1986, pages 2-5.

<sup>59</sup> Ernest Allen, Jr. "Identity and Destiny: The Formative Views of the Moorish Science Temple and the Nation of Islam," in Haddad and Esposito, *op. cit.*, pages 201-266.

<sup>60</sup> Steven Barboza. *American Jihad: Islam after Malcolm X*. New York : Image Books, 1995.

<sup>61</sup> Edward E. Curtis, IV. *Islam in Black America: Identity, Liberation, and Difference in African-American Islamic Thought*. Albany: State University of New York Press, 2002.

<sup>62</sup> Martha F. Lee. *The Nation of Islam: An American Millenarian Movement*. Syracuse, New York: Syracuse University Press, 1996, pages 19-35.

<sup>63</sup> The Nation of Islam continues under the leadership of Minister Louis Farrakhan. He operates the organization following the same doctrinal and structural principals laid out by Elijah Muhammad (aka Elijah Poole) when the movement was founded in 1930. Farrakhan persists as a national figure with such events as the 1995 Million Man March, and with his ongoing call for an independent state for African Americans.

<sup>64</sup> Some African American converts consider Islam an ancestral faith because of its history in African nations and evidence of its practice among enslaved Africans in the United States. As such, they envision themselves not as converts to Islam, but as "reverts" to the faith.

<sup>65</sup> See, among others:

Curtis, 2002 *op. cit.*

Robert Dannin. "Island in a Sea of Ignorance: Contours and Dimensions of the Prison Mosque," *Making Muslim Space in North America and Europe*, Barbara Metcalf, ed. Berkeley: University of California Press, 1996, pages 131-146.

David J. Feddes. "Islam among African-American Prisoners," *Missiology*, 36, no. 4, (2008) pages 505-522.

Despite African Americans' strong numbers among Muslim Americans, they are not necessarily well-integrated in American mosques. Scholars such as Catherine Tucker and Jennifer Van Hook have studied patterns of segregation in their places of worship. Like their Christian counter-parts, they commonly congregate in mosques with memberships made up mostly of their racial group.<sup>66</sup> This is likely a reflection of several factors. First, Nation of Islam mosques were primarily established in urban African American neighborhoods, and many continue in those neighborhoods as Sunni mosques. Bagby's 2001 survey of American mosques indicated that 89% of predominantly African American mosques (regardless of any former affiliation with the NOI) were identified as being located in "city neighborhoods" and "inner city" neighborhoods.<sup>67</sup> Second, Massey & Denton<sup>68</sup> and Logan, et al<sup>69</sup> have found that African Americans are among the most residentially segregated minorities and, since houses of worship tend to be located in residential neighborhoods in the United States, the practice of their faith is segregated there as well. More divisively, Tucker and Van Hook cite research indicating that "immigrants seek to be upwardly mobile in their assimilation to the US. . . [and] avoid associations with lower status groups, such as African Americans, when possible."<sup>70</sup> This would suggest that segregation among Muslim Americans may be reinforced and perpetuated by immigrant adherents as much as by housing patterns. Neglected in this interpretation, however, is the agency African American Muslims have in self-segregation. Aminah McCloud has written that African Americans elevate *asabiyya*, an Arabic term meaning group solidarity, over the

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<sup>66</sup> Catherine Tucker and Jennifer Van Hook. "Racial Segregation in Muslim Congregations: Evidence from 11 Metropolitan Areas Across the United States." Paper in progress presented at a conference of the Population Association of America, Dallas, TX, 4/15/2010.

<sup>67</sup> Bagby, 2001, *op. cit.*, page 26.

The segregation of the Islam in American is more completely understood in the following statistics (found on page 19 of the report). Only 7% of mosques responding to Bagby have only one ethnic group in their membership. One quarter of the congregations have a 90% majority of one ethnic group. The congregations matching these two statistics are predominantly African-American. Thirty-one percent of responding mosques have two dominant ethnic groups; South Asians and Arabs worship together most frequently in these cases. Finally, about five percent of responding mosques are attended by numerous ethnic groups, none of which are in majority.

<sup>68</sup> Douglas S. Massey and Nancy A. Denton. *American Apartheid: Segregation and the Making of the Underclass*. Cambridge, MA: Harvard University Press, 1993.

<sup>69</sup> John R. Logan, et al. "Segregation of Minorities in the Metropolis: Two Decades of Change." *Demography* 41:1-22, 2004.

<sup>70</sup> Tucker and Van Hook, *op. cit.*, n.p.

*ummah*, the universal Muslim community. This definition of the group outside of the universal community, asserts McCloud, results in a resistance on the part of African Americans to accept the customs and authority of immigrant Muslims, and a desire to stay separate from them.<sup>71</sup>

A number of the assertions above are controversial. There is a good deal of sensitivity among Muslim Americans of all ethnicities regarding the faith's racial segregation in the United States. The Islamic faith strives toward an ideal of equality and brotherhood among all Muslims regardless of race or ethnicity, and most Muslims are reluctant to admit that this ideal is difficult to achieve. Positively, emerging data from Ihsan Bagby suggest that over time, diversity—that is, the mixing of African American and immigrant-origin Muslims—is increasing in Muslim American faith communities.<sup>72</sup> Still, the realities of racial segregation in American Islam must be acknowledged by researchers as their studies are designed, executed and analyzed.

### ***The Evolution and Growth of Immigrant-Origin Muslim American Communities***

As documented by Aswad and Bilg , Haddad, Smith and others,<sup>73</sup> immigrant Muslims began arriving in the United States electively in earnest in the late nineteenth century. Through the mid-twentieth century, there were several distinct waves of arrivals. Scholars do not reliably know how many Muslims came in the period, but the literature does reveal in some detail where those Muslims came from and where in the United States they settled.

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<sup>71</sup> Aminah Beverly McCloud. *African American Islam*. New York: Routledge, 1995, pages 4-5, 10-11, and conclusion.

<sup>72</sup> Bagby, 2011, *op. cit.*, pages. 5, 13-14.

<sup>73</sup> Unless otherwise cited, the history of Muslim immigration in this section is drawn from the following sources:  
Barbara C. Aswad and Barbara Bilg , eds. *Family and Gender Among American Muslims: Issues Facing Middle Eastern Immigrants and Their Descendents*. Philadelphia: Temple University Press, 1996, pages 5-9.

Haddad, *op. cit.*, 1986.

Haddad and Lummis, *op. cit.*, 1987, pages 13-16.

Smith, *op. cit.*, pages 50-54.

The first, small wave of Muslim immigrants, arriving between 1875 and 1912, consisted of subjects of a portion of the crumbling Ottoman Empire then known as Greater Syria (modern Syria, Jordan, Palestine/Israel and Lebanon).<sup>74</sup> After World War I, these Ottoman Muslims were joined by a flood of fellow refugees from Greater Syria. In response, the United States crafted legislation in 1921 and 1924 that limited immigration from the Middle East and Asia to family members of those already in the United States; the restrictions were in place through the Second World War. The Muslims who arrived in the intervening years settled primarily along the East Coast cities and towns, working as merchants and laborers; others were drawn to metropolitan Chicago and Detroit for employment in manufacturing and the auto industry. The small number of South Asians who immigrated in the 1930s and 1940s settled mostly in metropolitan areas on the West Coast. Mosques, Islamic Centers, and other Islamic institutions dating from this period of Muslim immigration are few outside of population centers like Chicago and Detroit, for a number of reasons. Primarily, the numbers of immigrants were small, and they rarely had sufficient collective resources to establish permanent institutions; worship commonly occurred in homes and storefronts. Further, the majority were men who emigrated alone, sending money back to their families and hoping to return to their home regions once conditions stabilized. Many who did not return and settled outside of Muslim population centers intermarried with women of other faiths and assimilated.

After World War II, and following further immigration law reforms in 1953,<sup>75</sup> Muslims came to America from more world regions, many as refugees. Between 1945 and 1960, Muslims fled the partition of Pakistan from India; the formation of Israel; the establishment of oppressive regimes in Iraq, Egypt and Syria; and the expansion of Communism in Eastern Europe. Whereas

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<sup>74</sup> Muslims immigrating from Greater Syria were far outnumbered by fellow Christian countrymen, who also fled the economic and political disarray that preceded World War I.

<sup>75</sup> The Nationality Act of 1953: (1) ended standing policies that blocked immigration from entire world regions, and (2) allowed yearly immigrant quotas based on percentages of immigrants extant in the US at the end of the nineteenth century. European nations continued to be favored as entrants under the act, but the possibility for immigration other parts of the world was bettered. Smith, *op. cit.*, page 52.

previous Muslim immigrants had been primarily laborers and merchants, this next wave mainly consisted of educated urbanites; some were part of former ruling classes. They settled mostly in cities on the East Coast and in the Midwest, where Muslim populations already were established. Many continued their educations in American universities or sought advanced technical training. A sizable portion returned to their nations of birth as turmoil calmed. Few local Islamic institutions remain from the 1950s and 1960s, either, but in the period Muslim immigrants did begin to forge national federations for the purposes of unity and advocacy. These include the Federation of Islamic Associations of the United States and Canada, The Muslim Students Association, and North American Islamic Trust.<sup>76</sup>

As a result of the 1965 Hart-Cellar Act, the character of overall immigration to the United States changed. As described in the dissertation's introduction, the act still favored those seeking family reunification, but it abolished immigration quotas and additionally favored immigrants seeking skilled employment and advanced education. As a result, many of the Muslim immigrants who have arrived since 1965 have tended to be middle class and have greater financial prospects than those who arrived in previous decades. The greatest numbers came from South Asia, including India, Pakistan, and Bangladesh, as well as Arabic-speaking countries in the Middle East. Most stayed on in the United States and invested energy and money in the establishment of permanent Islamic institutions at the local, regional and national levels. As mentioned in the demographics section of this chapter, these ethnic groups make up the greatest number of Muslim Americans of immigrant origin. It is they who primarily have been responsible for the expansion in the numbers of mosques in America's suburbs. It is from their ranks that the case study faith communities were identified.

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<sup>76</sup> Gutbi Mahdi Ahmed, "Muslim Organizations in the United States," in *The Muslims of America*, Yvonne Yazbeck Haddad, ed. New York: Oxford University Press, 1991, pages 12-14.

Many Muslims arriving in recent decades have been less fortunate. Geopolitical turmoil and lack of economic opportunity continued to motivate some Muslims to immigrate to the United States: conflict between Palestinians and Israelis drove refugees from that region in the late 1960s and early 1970s; Iranians arrived in large numbers following their country's revolution in 1979; Lebanese fled civil war in the 1970s and 1980s; Malaysian and Indonesian Muslims escaped regional economic meltdown in the 1990s; and, in the last decade, Somali, Yemeni, Bosnian<sup>77</sup> and Iraqi Muslims have fled conflict and poverty in their home nations. Their integration into American culture is only beginning to be documented.

### ***Immigrant Muslim Suburbanization and Local Institution Building***

Until the 1980s, Muslim immigrants followed larger immigrant settlement patterns, taking up residence primarily in coastal cities and the Midwestern industrial zones,<sup>78</sup> then moving out into suburban areas as they established themselves financially and socially. Since that time, they have increasingly settled in emerging gateway cities (such as Somalis in Minneapolis/St. Paul) and, more commonly, directly in the suburbs. This reflects the immigrant suburbanization pattern described in the introduction to this dissertation. Muslims did not begin to establish purpose-built mosques in any sizable numbers in America until after 2000, however. This is due in large part to an aspect of the Islamic faith. Many Muslims believe that Islam discourages wealth accumulation via compounding interest, so communities often save for several decades before having sufficient resources to plan and propose religious facilities. In the meantime, as is exemplified in the case studies, fledgling faith communities frequently worship first in members'

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<sup>77</sup> Bagby, 2012, *op. cit.*, page 14.

<sup>78</sup> Of note, Sunni Arabs were commonly drawn to the well-established and thriving Arab American communities of Detroit, Dearborn, Ann Arbor and Chicago. Muslims who follow the Shi'a tradition of Islam are a minority of American Muslims (11% in 2011, according to the Pew Research Center, 2011 *op. cit.*, page 23.). They are commonly Iranian and Iraqi. To share their traditions and meet community needs, they have formed population centers in Los Angeles as well as Dearborn. Informative ethnographic studies on the Shi'a in America have been published by Abdulaziz Sachedina and Linda Walbridge. See: Abdulaziz A. Sachedina, "A Minority Within a Minority: The Case of the Shi'a in North America" (pages 3-14), and Linda S. Walbridge, "The Shi'a Mosques and Their Congregations in Dearborn"(pages 337-358), in Haddad and Smith, 1994, *op. cit.*



homes or in rented spaces such as commercial properties or meeting rooms in hotels. As community resources accumulate, extant buildings such as churches or storefronts might be purchased and repurposed for use as worship spaces and social halls. Later, as the immigrant community integrates and expands with successive generations, the capacity for new construction is reached.<sup>79</sup> The increase of mosque construction after 2000—perhaps as much as 45%<sup>80</sup>—reflects this phenomenon, as well as the desire of Muslim Americans to provide proper Islamic education and community resources for younger generations.

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## Part II: The Mosque in America—Uses and Design, in Brief

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### ***An Introduction to the Mosque***

Islam requires that prayers be made five times a day, in any space which is clean and free from distraction. A Muslim can pray alone, but prayer in community is preferable when two or more Muslims are present, Congregational prayer is required once a week for *salat al jum'a*, the communal prayer held in mosques on Fridays at midday, and which includes a *khutbah*, or sermon.<sup>81</sup> In predominantly Muslim areas of the world, the faithful usually either pray at home or work, or in small neighborhood or community mosques located in residential areas and business districts.<sup>82</sup> For Muslims working outside their neighborhood or in a district where there is no mosque, an informal prayer space, known as a *musalla*, may be set aside for daily prayers

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<sup>79</sup> Although methodological problems with Bagby's 2001 and 2011 surveys call into question the validity of some of his data and analysis, his findings are nonetheless useful as a general gauge of mosque development in the US over the last several decades. Of the faith communities he surveyed in 2000, only two percent were founded prior to 1950, almost ninety percent of the balance were founded after 1970, and over three-fifths of those were established after 1979. Over half the mosques surveyed were moved to or were founded at their present location in the 1990s. Just under thirty percent of these were purpose-build structures, while over half were housed in buildings originally intended for other purposes (see Bagby, 2001, *op. cit.*, pages 24-25). Similar data is provided in the 2011 survey but comparability is not clear (see Bagby 2011, *op. cit.*, page 9).

<sup>80</sup> See analysis of this estimate in this work's introduction.

<sup>81</sup> For a detailed description of Islam's prayer ritual and the Five Pillars of the faith, see Frederick Mathewson Denny's *An Introduction to Islam, Second Edition*. New York: Macmillan Publishing Company, 1994, pages 107-135.

<sup>82</sup> Robert Hillenbrand. *Islamic Architecture: Form, Function and Meaning*. New York: Columbia University Press, 1994, pages 44-45.

within a secular building. The obligatory congregational prayers on Fridays take place in larger facilities, known as *jami* mosques, which are built to accommodate most Muslims in a city or region.<sup>83</sup> Because of the comparatively small size of the Muslim community in America, this hierarchy of prayer spaces is not necessary or possible. Mosques in the United States are multi-purpose facilities, frequently referred to as Islamic centers, which, in addition to hosting congregational prayers, also serve a variety of social, educational and other community functions. Although this range of uses is not common in predominantly Muslim societies, the variety of services provided in American mosques has strong heritage in Islam.

In the time of the Prophet Muhammad, who lived in the seventh century CE, judicial, political, educational and community affairs were conducted from the first mosque in Madina, Saudi Arabia.<sup>84</sup> During the early Islamic empire, *jami* (congregational) mosques included large-scale multi-use complexes that accommodated educational facilities, judicial proceedings, and commercial functions. Charity was offered to the poor from mosques, as well, and travelers were hosted in connected overnight accommodations.<sup>85</sup> Between the eighth and twelfth centuries CE, political, legal, mercantile and community functions were progressively removed from mosques.<sup>86</sup> This pattern of segregating sacred and secular uses continued into the modern era, with the result that modern mosques in the Middle East and other parts of the Muslim world serve only a fraction of the purposes that the Prophet intended.<sup>87</sup>

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<sup>83</sup> Mohamad Taujuddin Haji Mohamad Rasdi. *The Mosque as a Community Development Center: Programme and Architectural Design Guidelines for Contemporary Muslim Societies*. Johor Darul Ta'zim, Malaysia: Universiti Teknologi Malaysia, 1998.

<sup>84</sup> Rasdi, *ibid*, chapters three and four; the author provides an excellent analysis of the Prophet's use of his mosque as recorded in the *Qur'an* and the *sunna*—the sayings and teachings of Muhammad.

<sup>85</sup> Hillenbrand, *op. cit*, pages 69-63.

<sup>86</sup> Rasdi, *op. cit*, page 229.

<sup>87</sup> Rasdi notes that fundamentalism in the Middle East is beginning to reverse this pattern, replacing some community functions to satisfy the demands of pressure groups. However, "in the midst of this building frenzy, clients and builders of mosques [pay] little attention to developing proper programmes for mosque activities while attempting to strike a compromise between the mosque as a historical symbol and the modern secular lifestyle"(page 229). Rasdi's work is a response to this trend. He attempts to provide a systematic analysis of historical use and modern needs, and to propose a theoretical framework for the design of a modern mosque. His vision is intended for his native Malaysia, but many of his proposals are entirely appropriate for the American context.

Muslim immigrants brought this model of mosque use to the United States. Over time, however, practical considerations, especially fiscal ones, have forced them to expand their thinking on acceptable uses for their houses of worship. Sometimes, their evolved thinking causes tensions with more recent arrivals:

[the newer immigrants were surprised by the way we were using the mosque and] told us it is illegal [to have multiple uses]. It is against Islamic law. You cannot use the mosque except for prayer. . . we explained to them that in [American] society the Muslim people, until they become very wealthy, cannot afford to have social halls and mosques with separate furnaces and separate land areas and separate parking facilities. Sometimes these poorer people will have to incorporate the social hall with the mosque to facilitate and expedite the instruction of Islam and the worship of God. . . they thought all mosques were like in the old country—government controlled, government built, and government supported. In the old country, nobody owns a mosque.<sup>88</sup>

In America, individual faith communities organize, fund and govern individual mosques. Islam is a decentralized faith without a unifying leader (such as the Pope in Roman Catholicism), so individual faith communities have a great deal of autonomy in their governance. Of necessity, they increasingly choose to include in their houses of worship social halls, classrooms for adults and children, Islamic libraries, recreation amenities and facilities for the provision of social services. Accommodations for the ritual preparation of bodies for burial are sometimes designed into mosque complexes, as well.

### ***Approaches to Mosque Design in America***

Architectural historian Jerrilyn D. Dodds<sup>89</sup> and anthropologist Susan Slyomovics<sup>90</sup> have documented the rehabilitation of existing spaces for use as mosques and the many factors that shape reconstruction choices. These include the availability of funds, the length of time a faith community intends to use the structure, and the emphasis the community places on the importance of architecture. In repurposed buildings, the indication of sacred space may be

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<sup>88</sup> Haddad and Lummis, 1987, *op. cit.*, pages 40-41.

<sup>89</sup> Jerrilyn D. Dodds. *New York Masjid: The Mosques of New York City*. New York: Powerhouse Books, 2002.

<sup>90</sup> Susan Slyomovics. "The Muslim World Day Parade and 'Storefront' Mosques of New York City," in Metcalf, 1996, *op. cit.*, pages 204-216.

communicated simply with arches or patterns painted on the walls of a former home, church or commercial structure, while the exterior remains unchanged save for simple signage. In other cases, interiors are completely gutted and exteriors augmented with applied domes, arches and other symbols thought to represent Islam.

The *carte blanche* of new construction opens opportunities for architectural expression and variation of uses, but, as in any faith community, Dodds documents the debate that exists among American Muslims regarding the degree to which design and material beauty should be emphasized, and at what cost to social service and outreach.<sup>91</sup> The issue takes on particular meaning in Islam, which, as described above, recognizes all clean and quiet spaces as acceptable for prayer. If prayers made in an office are acceptable to God, some wonder why a faith community should devote limited funds to the form and ornamentation of a purpose-built structure. Critics question whether in spending money on design they are neglected more urgently needed charitable service.<sup>92</sup> However, at the same time that some Muslim Americans de-emphasize the significance of architecture, many take pride in the beauty and cleverness of specific designs. As evidenced in stunning historic and contemporary mosques across the globe, Muslims do take pride in their built environment and particularly their sacred spaces. In my general experience with Muslim faith communities, and in particular with the case study communities, those congregations with few funds, functioning out of barely-rehabilitated structures, press the point that it matters not where they pray. Those with larger budgets and designed buildings, however, more readily delight in the appearance of their prayer halls.<sup>93</sup>

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<sup>91</sup> Dodds, *op. cit.*, page 29.

<sup>92</sup> This conflict is particularly well expressed in this quote, recorded by Dodds (*op. cit.*, page 29):

The most beautiful mosques are recognized by the way they care for their communities. A mosque ought to be a community center; it ought to be the place where people are helped to find jobs, or care, or homes, sometimes when I look at the grandest mosque buildings, I wonder if an elaborate building does not mean that someone, somewhere is being neglected.

<sup>93</sup> In 1999, while exploring the possibility of launching this dissertation research, I conducted limited, exploratory case studies in three New York City-area Islamic Centers. The design sentiments reflected in this paragraph are drawn from interviews with Mohammad Tariq Sherwani of the Muslim Center of New York in Flushing, Queens, 5/4/1999; Ziyad Monayair and Mohammed Younes of the Islamic Cultural Center of New York, Manhattan, 5/5/1999; and a community member who wished to be identified only as Khadija, representing the Masjid Usman Othman ben Offan in Manhattan, 5/5/1999.

Islamic symbolism in architecture—specifically the dome and minaret (an ancillary tower which is traditionally used for making the call to prayer)—is also debated among American Muslims and scholars of Islam. Differences are expressed over whether these symbols are included in mosque design for the sake of faith communities themselves or for that of the non-Muslim audience who will observe them. New York Muslims, discussing on their own mosque's decorative motifs with Dodds, demonstrated the dichotomy:

Any new masjid, any [faith] community in New York, wants to have a dome. . .the dome means Muslims in America.<sup>94</sup>

[When we built our dome, it] reflected what people used to think Islam was about. [Domes] have more to do with an old-fashioned American interpretation of what Islamic architecture looked like, or with Ottoman architecture, than with Islam in general.<sup>95</sup>

More critically, Omar Khalidi notes that the early twentieth century American fashion of using of Islamic symbols in such venues as Shriner temples, theatres, and amusement parks in the early twentieth century. The practice, he argues, minimizes “the authenticity of the old monuments [that immigrant Muslims Americans frequently] aspire to imitate” in their mosques.<sup>96</sup> In his 1999 survey of American mosque designs, Khalidi classified three basic aesthetic themes that dominate mosque design here:<sup>97</sup> the almost unaltered import of traditional design schemes from the Muslim world; the hybridization of Islamic motifs with typical American forms; and innovative modernism. Khalidi holds that the latter is particularly well-suited to America's typically multi-ethnic congregations; stylized designs enable the inclusion of required features without overt reference to the regional motifs of any one subgroup within the faith community. Architects such

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<sup>94</sup> Dodds, *op. cit.*, page 84.

<sup>95</sup> Imam Kareem of Masjid Malcolm Shabazz (formerly an NOI temple, now a Sunni congregation), quoted in Dodds, *op. cit.*, page 90.

<sup>96</sup> Omar Khalidi. “Approaches to Mosque Design in North America,” in Haddad and Esposito, *op. cit.*, pages 317-334.

<sup>97</sup> *Ibid*, page 322.

as Gulzar Haider.<sup>98</sup> and Akel Ismail Kahera<sup>99</sup> also strongly advocate for the latter approach to create a distinctly American form for the mosque.

However, architects may not often be able to influence mosque design as much as they might like. Committees formed within faith communities can have a strong influence on design outcomes, with immigrants favoring plans reminiscent of mosques they recall in their homelands.<sup>100</sup> Project donors also can influence design choices with their own views. Sometimes, in an effort to control costs, the congregation may not hire an architect for the conceptual stages of design. Instead, as documented by Dodds and Khalidi, they may first work with construction engineers or similarly skilled individuals to develop draft plans; sometimes these individuals are members of the faith community. To secure planning approvals, they then hire a registered architect to finalize and stamp construction drawings.<sup>101</sup>

Regardless of the design path chosen by a Muslim American faith community—rehabilitation versus new construction, an assimilative design or an architectural statement, a traditional or innovative form—mosques, particularly in the suburbs, are likely to be controversial. The controversy can be design-based, but more frequently resistance is based on the likelihood that the land use will introduce populations which suburban residents may want to exclude based on fear and bias. And, just like anything “new” and “big” in suburbia, mosques can create commonplace land use concerns over such issues as parking, traffic, lighting and other impacts. Municipalities deal with these complex development scenarios with land use regulations.

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<sup>98</sup> Gulzar Haider. “Muslim Space and the Practice of Architecture: A Personal Odyssey,” in Metcalf, 1996, *op. cit.*, pages 31-45.

<sup>99</sup> Akel Ismail Kahera, *Deconstructing the American Mosque: Space, Gender and Aesthetics*. Austin: University of Texas Press, 2002.

<sup>100</sup> Gulzar Haider. “Brother in Islam, Please Draw us a Mosque,” in *Expressions of Islam in Buildings*. Proceedings of an International Seminar Sponsored by the Aga Khan Award for Architecture and The Indonesian Institute of Architects, Jakarta, Indonesia, 10/15-10/19/1990. Geneva, Switzerland: The Aga Khan Trust of Culture on behalf of the Aga Khan Award for Architecture, 1990, page 158.

<sup>101</sup> Dodds, *op. cit.*, pages 31-32 and Khalidi, *op. cit.*, page 322.

### ***Exclusionary Roots of Land Use Planning***

Land use regulation in America has roots that extend to Elizabethan England and attempts there to control growth and congestion. Cities expanded rapidly during England's vastly wealthy imperial age, often to the detriment of public health and safety. Callies, *et al.* write that early legal attempts to regulate private property use were made in response to emerging weaknesses in the standing law of nuisance, which to that point had insufficiently addressed the challenges of urban growth. That English system came to America via colonial laws that focused on building standards and aesthetic concerns.<sup>102</sup> However, in America's largely agrarian society, the need for public controls of private land uses was not as pressing as it would be during America's late nineteenth century Industrial Age. America's booming factories gave rise to booming cities, as well as the adverse impacts of population increases, overcrowding, and related public health impacts. The slum city galvanized social reformers to consider improvements to the built environment which would relieve congestion, reduce disease and social ills, and create more aesthetically appealing urban areas. In the last decades of the century, writes Peter Hall,<sup>103</sup> the thinking of social justice activists, design theoreticians and elected officials coalesced to achieve formalized government approaches to city planning. In this progressive movement, the segregation and exclusion of uses was determined to be an appropriate and proper exercise of local police power, defined as a government's ability to regulate on behalf of the health, safety, morals and general welfare of the public.<sup>104</sup> That determination forms the basis for land use planning generally, and specifically for zoning. Zoning, in the simplest terms, is the practice of saying which uses can be placed where and

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<sup>102</sup> David L. Callies, et al. *Cases and Materials on Land Use*, 3<sup>rd</sup> Edition. St Paul Minnesota: West Group, 1999, pages 1-3.

<sup>103</sup> Peter Hall *Cities of Tomorrow: An Intellectual History of Urban Planning and Design in the Twentieth Century*. Cambridge, MA: Blackwell Publishers, 1988.

<sup>104</sup> Robert R. Wright and Morton Gitelman. *Land Use in a Nutshell*, 4<sup>th</sup> Edition. St Paul Minnesota: West Group, 2000, pages 2-5.

which cannot. We use zoning to separate housing from commercial and industrial uses, for example, or prevent adult businesses from locating near schools.

New York City passed the first comprehensive zoning ordinance in 1916, segregating uses and controlling building practices for the protection of public health and safety; Boston and Los Angeles had enacted more basic laws in the previous decade.<sup>105</sup> The success of these efforts, and rising general concerns for rationalized urban design, inspired other municipalities to take up the practice of zoning. The movement inspired pushback from advocates of non-interference with private property rights. An Ohio case became the watershed ten years later, upholding the general authority to zone under the police power (*Village of Euclid v. Amber Realty Co.*, 272 US 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926) ).<sup>106</sup> At the same time, the federal government took leadership for developing standardized approaches to zoning and planning. Ruth Knack *et al.*<sup>107</sup> have recorded the history of the Commerce Department's formulation of the Standard Zoning Enabling Act (SZE, 1926) and the Standard City Planning Enabling Act (SCPEA, 1928). The provisions of the acts served as models on which local municipalities could establish their own planning and zoning regulations. Critically, the acts required that planning and zoning decisions be made in accordance with a rational, comprehensive municipal plan.

From the general SZE and SCPEA, states departed to establish their own land use regulating mechanisms. Challenges to those mechanisms took place at the state level because, after early cases establishing the validity of zoning and comprehensive plans, such as *Euclid*, mentioned above, the Supreme Court did not decide another zoning case until 1974. In the interim, state

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<sup>105</sup> Callies, *op. cit.*, page 3 and 23.

<sup>106</sup> *Ibid*, pages 24-31.

<sup>107</sup> Ruth Knack, *et al.* "The Real Story Behind the Standard Planning and Zoning Acts of the 1920s," *Land Use Law and Zoning Digest*. Chicago, American Planning Association, February 1996. Pages 3-9. See also: Stuart Meck, AICP. "Model Planning and Zoning Enabling Legislation: A Short History," *Modernizing State Planning Statutes: The Growing Smart Working Papers, Vol. 1*, Planning Advisory Service Report No. 462/463. Chicago, American Planning Association, 1996.



supreme courts shaped land use regulation and expanded the police power to address such issues as aesthetics, urban blight, historic preservation, growth and sprawl, environmental protection and new planning techniques.<sup>108</sup> Despite resulting state-to-state variations in practice, a common framework for reviewing the impacts of development projects exists and can be understood in broad terms; it is presented in the next section.

### ***Impact Mitigation***<sup>109</sup>

The limiting of a development project's adverse impacts takes place within public review processes established in the Standard City Planning and Zoning Enabling Acts, described above. Local governments carry out these regulatory functions by appointing planning, zoning and historic review boards to write comprehensive plans, area plans, and zoning ordinances and then review development projects for compliance with those plans.<sup>110</sup> During review processes, potential negative impacts of a proposal on a neighborhood or district are identified and mitigations of those impacts are required of the developer. Before construction permits are issued to developers, project compliance with standing codes and ordinances must be demonstrated, and any conditions set to reduce a project's impacts must be met.

The subdivision of developable land into building lots is controlled by local governments, which must approve developers plans and impose restrictions on the use of that land. In subdivision regulation, municipalities can control the design of the street system, traffic management, desired lot sizes, and require developer-funded infrastructure provisions such as water, sewer, storm water management, power, and even sidewalks. Listokin and Walker describe the subdivision regulation process as the point at which a community's interest in an area of land is

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<sup>108</sup> Callies, *op cit.* page 253.

<sup>109</sup> An excellent reference for impact mitigation is found in David Listokin and Carole Walker's *The Subdivision and Site Plan Handbook*. New Brunswick, NJ: The Center for Urban Policy Research, 1989.

<sup>110</sup> Building codes, which regulate specific health and safety issues related to architectural design and engineering, are established by separate statute and are reviewed by municipal building inspectors.

expressed and protected, because it is then that the public establishes the standards and procedures that a developer must meet when improving the land.<sup>111</sup>

Site plan review, conducted by planning or zoning boards (depending on jurisdictions), includes the examination of a proposal's potential impact on drainage, circulation, and relationships among buildings on the site as well as with those on surrounding parcels. Site plan review also includes landscape plans, including vegetative and other buffering for sound and light impacts, as well as the management of parking and traffic on the site. Public comment is heard on the proposed application, and conditions for approval are set by the review board. Well-planned municipalities with comprehensive outlooks will also use design guidelines to shape desirable development outcomes. These might require compliance with height, massing, material and color requirements. In historic districts, development must also be achieved in ways that respect the character, scale and appearance of the surrounding neighborhood's architectural heritage. Development within historic districts is regulated by a separate review board, commonly known as a landmarks commission.

When proposals are made which we do not meet the regulations established in zoning and site plan ordinances, variances from standing codes may be requested from the municipality. Use variances are one type of exemption which might be sought by a developer; for example, she might want to develop a commercial use not normally allowed in a neighborhood zoned for residential use only. Variances from a code requirement might be sought by a developer as well. Perhaps she wishes to construct a portion of her building closer to the rear lot line than the zoning code allows; she would request a variance from rear yard setback requirements. These kinds of variances are normally reviewed by zoning boards of adjustment. Statutory requirements normally call for the notification of neighboring property owners, and their

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<sup>111</sup> Listokin, *op. cit.*, page 130.

comments on the proposal are heard. If, after determining appropriate modifications to reduce impacts, the variance is not deemed detrimental to the parcel or the surrounding neighborhood, an exception to the code is granted.

For the protection of property owners and their individual liberties, the general functions of land use planning—use segregation/exclusion and impact mitigation—must be practiced within constitutional constraints, some of which have been clarified and extended by statutory language. Guidance is derived from the Fifth, Fourteenth and First Amendments, described below.

### ***Constitutional Constraints on Land Use Regulation*<sup>112</sup>**

The final clause of the Fifth Amendment, known as the Takings Clause, relates to private property: “. . . nor shall private property be taken for public use, without just compensation.”

Under the power of eminent domain, the federal government and the states have the ability to take private property for public use. The Takings Clause limits eminent domain by requiring that just compensation, normally understood as fair market value, be awarded to a property owner in exchange for the public's use of the land. The definition of takings extends to regulatory measures. That is, if the application of a land use regulation, such as zoning or historic preservation, deprives a private owner of *all reasonable* use or value of their property, that owner is entitled to just compensation.

The Fourteenth Amendment extends two critical protections in land use law: due process and equal protection. Substantively, due process is achieved when regulations promote, in a rational and non-arbitrary manner, a legitimate public end. Further, the regulations must not be unduly oppressive upon those affected by them. Procedurally, due process requires that state actions

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<sup>112</sup> See Callies, *op. cit.*, chapter 4, “Constitutional Limits on Land Use Controls,” pages 253-398.

be conducted in fair processes, extending notice to those affected and affording the opportunity for public hearings. The Equal Protection Clause provides that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." It is used most commonly in claims of disparate treatment based on membership in a protected class (a racial, religious gender, age, disability or other group).<sup>113</sup> As described in Michael N. Danielson's seminal work *The Politics of Exclusion*,<sup>114</sup> the Equal Protection clause has been critical in land use regulation for addressing local exclusionary zoning efforts which seek to prevent access to housing for the poor and minorities. Further, the Fourteenth Amendment has provided the constitutional justification for such landmark legislation as the Civil Rights Act and the Fair Housing Act.

Finally, the First Amendment, which provides two essential protections in land use regulation. First, it extends the freedom of speech. Three principal land uses call this freedom into play: billboards and signs (including political signs), sexually oriented businesses, and religious land uses. The aesthetic regulation of signs and billboards is normally considered a reasonable application of the police power, but content regulation is seen as less reasonable. Sexually oriented businesses are extensively regulated in land use but, because of free speech considerations, cannot be banned completely from municipalities.<sup>115</sup> The freedom of religion is protected under the First Amendment via two clauses, the Establishment Clause and the Free Exercise Clause. Together they constitute the so-called separation of church and state in American law:<sup>116</sup>

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<sup>113</sup> Michael S. Giaimo. "Challenging Improper Land Use Decision-Making Under the Equal Protection Clause," *Fordham Environmental Law Review*, April 2004, Volume 15, pages 335-403.

<sup>114</sup> Michael N. Danielson. *The Politics of Exclusion*. New York: Columbia University Press, 1976.

<sup>115</sup> See Callies, *op. cit.*, Chapter 4, Section D, "The First Amendment," pages 362-398.

<sup>116</sup> There are many resources available on the topic of the First Amendment. One historical reference is Wilson and Drakeman's Third Edition of *Church and State in American History: Key Documents, Decision and Commentary from the Past Three Centuries*. Cambridge, MA: Westview Press, 2003. Another source that is particularly helpful in the context of religious land uses is Deborah Rosenthal's article "Religion and the Constitution," included in the edited volume *RLUIPA Reader: Religious Land Uses, Zoning, and the Courts*. Michael S. Giaimo and Lora A. Lucero, editors. Chicago: ABA Publishing, 2009, pages 7-30.

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

The Establishment Clause was intended by the framers of the Constitution to prevent the federal government from declaring a national religion or preferring one religion over another, including non-religion. In the twentieth century, case law extended the restriction to the states. The Free Exercise clause, which is more complex, has been the subject of a range of interpretations over time. Historically, federal case law maintained that the Free Exercise clause made possible exemptions for religious institutions and their followers to generally applicable laws and policies made by all levels of government. Generally applicable laws make no distinctions among people, and are applied equally to all citizens. A strong example of a generally applicable law is provided by Amy E. Souchuns.<sup>117</sup> A state law, she says, might require school attendance by all children until they reach a certain age. However, Amish children, whose religion restricts school attendance beyond the eighth grade, could not be forced by the state to attend school past that point. Their religious values, then, result in their exemption from the generally applicable law regarding public education. The only way that the state could override this exemption is to demonstrate that it has a critical interest in educating all citizens until a designated age, and that this interest outweighs the constitutionally protected right to practice religion without state interference. Such demonstrations of state interest are called the “strict scrutiny” test. Should a state fail to pass it—that is, if the state cannot demonstrate that its interest is more important than an individual’s right to practice his religion—an exception to the generally applicable law must be granted. Land use laws are a type of generally applicable legislation.

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<sup>117</sup> Amy E. Souchuns. “We All Gotta Get Religion: A Primer on the Religious Land Use and Institutionalized Persons Act of 2000,” *Connecticut Planning: Newsletter of the Connecticut Chapter of the American Planning Association*, April-June 2001, page 1.

### ***Strict Scrutiny and Religious Land Uses***

A flurry of federal legislative and court activity in the 1990s shifted the boundaries of religious property law, and particularly the boundaries of the strict scrutiny test. The first dramatic departure from practice came in the wake of the Supreme Court's ruling in *Employment Division v. Smith*, 494 US 872 (1990). The case resulted from the State of Oregon's denial of unemployment benefits to a former employee because he was dismissed from his state job for misconduct. Smith, the employee, claimed that the misconduct, smoking peyote, was part of his Native American religious practice and sued for First Amendment Protections. When the matter reached the Supreme Court, its justices ruled that because Oregon had neutrally applied the generally applicable law that governs state unemployment benefits, there was no First Amendment violation even if a religious adherent was affected.<sup>118</sup>

The United States Congress took the position that *Employment Division v. Smith* narrowed the strict scrutiny test too much, enabling the government to more easily limit the activities of religious groups. In 1993, representatives passed the Religious Freedom Restoration Act (RFRA), reestablishing the previous strict scrutiny test for religious exercise cases. Additionally, the act limited governmental restrictions on religious exercise, known as burdens, to circumstances in which the government could demonstrate a "compelling governmental interest." Further, the burden or limit on exercise could only be applied with the least restrictive means necessary to meet the government's needs. RFRA was quickly invoked in local land use disputes such as attempts to landmark religious structures or limit new development on a religious property, but its legal lifetime would be short.<sup>119</sup>

In 1997, the Supreme Court ruled that RFRA was unconstitutional in *City of Boerne v. Flores* (521 US 507). In summary, a Catholic Church located within an historic district in the City of

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<sup>118</sup> *Employment Division v. Smith*, 494 US 872 (1990). Summary section, pages 1-2, <http://web.lexis-nexis.com/universe> (accessed 4/28/2004).

<sup>119</sup> Souchuns, *op. cit.*, page 4.

Boerne, Texas wished to expand its structure. The city's landmarks preservation commission denied the church a certificate of appropriateness for the proposed project, and the church filed suit claiming a violation of RFRA. Siding with the city, the Supreme Court determined that Congress had exceeded its legislative authority when passing RFRA. The Court found RFRA, a federal law, to be unconstitutional when applied to state and local jurisdictions; the ruling also restored the strict scrutiny standard established in *Unemployment Division v. Smith*.<sup>120</sup> Advocates for religious freedom were displeased with the decision and mounted lobbying campaigns to pass another federal law that would restore the pre-*Smith* strict scrutiny standard. They failed in 1999, but were successful a year later<sup>121</sup> with the passage of the federal Religious Land Use and Institutionalized Persons Act of 2000,<sup>122</sup> known as RLUIPA (generally pronounced ree-loopa).

### ***Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)***

RLUIPA's name indicates its two focus areas: limiting restrictions placed on religious entities by land use regulations, and on federal prisoners to practice their religion freely while incarcerated. Legal scholar Marci A. Hamilton describes RLUIPA as a "sausage" and a "quintessentially legislative product"—a bill which, after being stripped by compromise of many of its original elements, pertains in its final form to the two strangely paired issues of land use and federal prisoners.<sup>123</sup> When initially passed, RLUIPA was widely perceived to completely exempt religious land use proposals from local zoning and landmarking laws, and, in effect, mandate their approval. However, the initial assessment that RLUIPA was something of a free pass for religious entities was not entirely accurate, and was based largely on lack of clarity in the text of the bill. Put more accurately and simply, RLUIPA places religious and secular institutions on equal footing in land use reviews and requires the fair and unbiased consideration of religious

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<sup>120</sup> *City of Boerne v. Flores*, 521 US 507 (1997). Summary section, pages 1-2, <http://web.lexis-nexis.com/universe> (accessed 4/28/04).

<sup>121</sup> Souchuns, *op. cit.*, page 4.

<sup>122</sup> Pub. L. No. 106-274, 114 Stas. 803-807, codified at 42 U.S.C. § 2000cc to 2000cc-5.

<sup>123</sup> Giaimo and Lucero, *op. cit.*, page 31.

land use proposals. In constitutional terms, RLUIPA prohibits a local government from imposing or implementing a land use regulation, defined specifically in the act as zoning and landmarking, in any way that imposes a substantial burden on the free exercise of religion, unless the government can demonstrate that it has a compelling interest to justify the regulation and that it has used the least restrictive means to achieve the interest.<sup>124</sup> The burden of proof for demonstrating compelling interest in land use cases has swung on a political and ideological pendulum at least since the 1950s. RLUIPA decidedly shifts the burden once again to the government and, specifically in land use cases, to state and local governments. Additionally, it restores a higher bar that a government body must reach to consider zoning more compelling than free religious practice.<sup>125</sup> Problematically, RLUIPA does not define substantial burden, requiring the courts to reach some consensus; they have not yet done so.<sup>126</sup> This lack of clarity is one of a number of problematic aspects of the law, along with several significant departures it makes from precedent.

First, RLUIPA requires local, state and federal bodies to treat religious institutions on equal terms with nonreligious institutions (such as private clubs or lodges<sup>127</sup>); that is, religious assemblies may not be excluded where other secular assemblies are permitted, and they must be given the same zoning rights. Second, RLUIPA considers accessory functions (such as affiliated schools, food pantries, senior centers, cemeteries, etcetera) essential to the free exercise of religion and calls for them to be regulated in the same way that the primary worship spaces are regulated<sup>128</sup>—that is, a local government may not place a substantial burden on the

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<sup>124</sup> 42 U.S.C. § 2000cc(A)(1)

<sup>125</sup> The “strict scrutiny test” is applied in any constitutional conflict, not just land use, and regardless of whether the law or action is that of the federal, state or local government.

<sup>126</sup> See a discussion of the substantial burden question in chapter six of Giaimo and Lucero, *op. cit.*, pages 89-94.

<sup>127</sup> Adam Kingsley and Thomas Smith point out that some courts have suggested that “nonreligious assembly or institution” may include commercial or entertainment uses. These authors do not interpret RLUIPA’s intentions that way and believe that planners must help shape courts’ understanding of the distinctions between true assembly and retail/commercial uses. “The Zoning of Religious Institutions in the Wake of RLUIPA—A Guide for Planners,” *Zoning Practice*. Washington, DC: American Planning Association, September 2008, page 5.

<sup>128</sup> Accessory uses have been considered essential to the free exercise of religion because RLUIPA defines a “protected exercise” very broadly: “any exercise of religion, whether or not compelled by, or central to, a system of



accessory use, either.<sup>129</sup> However, recent court cases have begun to establish that, so long as the bases for zoning decisions are rational and equitable, the regulation of accessory uses does not necessarily place a substantial burden on a religious group's ability to practice freely.<sup>130</sup> The precedent of these cases is narrowing the focus of RLUIPA and giving municipalities greater ability to balance the needs of neighboring religious and private land uses.

The matter of legal challenges under RLUIPA represents another of the act's controversial aspects. If a municipality were to rule against a religious organization in a zoning application and the organization were to sue and win their case, RLUIPA includes a provision that requires municipalities to reimburse the religious organization's legal fees, even if they were provided *pro bono*.<sup>131</sup> There is a high disincentive, therefore, for municipalities to rule against a religious entity and risk lawsuit.<sup>132</sup> Additionally, several legal defense funds concerned with religious liberties, such as the Becket Fund for Religious Liberty,<sup>133</sup> have provided powerful representation to RLUIPA plaintiffs. When coupled with reimbursement, the prospect of a strong and well-funded opponent can also give local governments pause about ruling against a religious entity. Mediation, therefore, is likely to be far better option for municipalities.

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religious belief" (42 U.S.C § 2000cc-5(7)(A) ). The vagueness of this phrasing was initially interpreted to mean that all accessory uses should be considered the equivalent of actual worship. The courts have since modified this understanding.

<sup>129</sup> The treatment of accessory uses under RLUIPA has proved particularly vexing for municipalities and the courts alike because until the courts began narrowing the focus of RLUIPA the act seemed to mandate that municipalities approve accessory uses even if they had deleterious impacts on the properties that surround the religious use. Planners often felt that under the statute they could not adequately protect the rights and interests of surrounding property owners. See:

Adam J. MacLeod. "A Non-Fatal Collision: Interpreting RLUIPA Where Religious Land Uses and Community Interests Meet." Published on the website of the Social Science Research Network 1/7/2010.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1533015](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1533015), accessed 9/26/2010.

<sup>130</sup> See, among others; *Greater Bible Way Temple of Jackson v City of Jackson*, 478 Mich. 373 (2007); *Trinity Evangelical Lutheran Church v. City of Peoria, Illinois*, 07-cv-1029 (C.D. Ill. 3/31/2009); and *New Life Worship Center v. Town of Smithfield Zoning Board of Review*, 2010 R.I.Super. Lexis 101 (R.I. 7/10/10).

<sup>131</sup> Alan C. Weinstein. "Recent Developments Concerning RLUIPA," *Current Trends and Practical Strategies in Land Use Law and Zoning*, Patricia E. Salkin, ed. Chicago: ABA Publishing, 2004, page 3.

<sup>132</sup> The title of an article that appeared in *Planning* magazine in April 2003 gives a sense of the trepidation that the planning community has felt about RLUIPA: "Church v. State: Just Pray You're Not Sued Under the RLUIPA Statute." April 2003, pages 14-17. Michael S. Giaimo and Dwight Merriam, FAICP, authors.

<sup>133</sup> <http://www.becketfund.org/>

See also Patricia E. Salkin, "Conclusion: Seeing the Light through RLUIPA's Haze," Giaimo and Lucero, *op. cit.*, pages 171-172.

## ***RLUIPA's Challenges for Public Planning and Residential Neighborhoods***

One constitutional law scholar mused of RLUIPA:

Imagine what the press and public reaction would have been if the bill had been entitled 'A Bill to Permit Religious Landowners to Do Whatever They Want in Residential Neighborhoods and Subsidize Lawyers for Religious Landowners with An Attorney's Fees Provision,' instead of RLUIPA. That would have been a title no less misleading and a law that the members of Congress might well have examined with care, unlike their [actual] treatment of RLUIPA.<sup>134</sup>

While the constitutionality of RLUIPA's predecessor, RFRA, was determined, Senators Orrin Hatch and Ted Kennedy held a series of Congressional hearings on the alleged roadblock that local zoning review was creating for the free practice of religion. Many in the planning establishment allege that the hearings were biased, with testimony called primarily from religious institutions and their advocates. Kingsley and Smith quote testimony on municipal "hostility" toward religious land use development and "discrimination" against religious uses. The limited time allotted to representatives of the planning establishment and municipal advocacy groups did not allow for a sufficiently contrasting perspective. That contrast could have demonstrated that in order to balance a range of community needs and goals, religious uses are required to go through the same public review as other uses, and that the frustration of these processes is not normally the equivalent of discrimination. Further, engaging the planning establishment more fully might have better familiarized the legislation's framers with commonly acknowledged planning concerns such as compatibility among uses and quality of life issues like traffic and noise, and may have resulted in a number of reasonable compromises which would have better balanced religious practice with municipal and neighborhood concerns.<sup>135</sup> Without that balance, however, Kingsley & Smith and Hamilton and others make the case that the legislation which resulted from the hearings, RLUIPA, has had unintended consequences,

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<sup>134</sup> Marci A. Hamilton, "The Unintended Consequences RLUIPA Has Visited on Residential Neighborhoods," Giaimo and Lucero, *op. cit.*, pages 61-62.

<sup>135</sup> Kingsley and Smith, *op. cit.*, page 2.

particularly in residential neighborhoods. For example, the character and scale of residential neighborhoods can be permanently altered by the addition of a religious institution. Further, today's religious facilities offer a range of services and activities that take place throughout the week and into evening hours, making their noise, traffic and lighting impacts genuinely vexing to surrounding residents and property owners. The planning establishment has felt that RLUIPA limits its ability to reasonably regulate religious land uses and balance the development rights of religious entities with the rights and needs of surrounding property owners. However, outcomes in RLUIPA-related lawsuits increasingly support the idea that local governments actually do retain a significant amount of regulatory authority if the bases for decisions are supported by rational planning principles and neutral zoning codes.<sup>136</sup> This idea will be addressed more fully in Chapter VIII.

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## CONCLUSION

The literature review demonstrates that Muslims in America are ethnically and racially diverse, predominately middle class, moderate in their political views, well integrated into the culture's social fabric, and increasingly engaged in civic and political activity. Since 2000, those of immigrant origin are also more likely to be suburban dwellers and to develop their houses of worship in suburban neighborhoods. Their institutions tend to be multi-purpose, encompassing not only prayer halls but also educational, social and recreational functions to serve growing faith communities. Mosques and Islamic Centers are established in rehabilitated spaces as well as in purpose-built complexes, and as part of their design the question of a visual identity for Islam in America is being explored by faith communities and their architects.

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<sup>136</sup> Weinstein, *op. cit.*, page 11; Kingsley and Thomas, *op. cit.*, page 3.

As part of institution building, Muslim American faith communities are often interfacing for the first time with the land use regulations and public review processes—for example zoning approvals and site plan review—that govern development in suburban districts. Growth and change in these areas tends to be controversial as a matter of course. Growth and change is that much more controversial when prompted by the development proposals of a religious minority commonly associated with negative geopolitical events and ongoing debates of national identity and civil rights. And, at the same time that mosque development began to increase, the regulatory environment for religious land uses was dramatically altered by the passage of the Religious Land Use and Institutionalized Persons Act of 2000. This scenario—unwanted growth in municipalities unaccustomed to a particular land use and to the minority community proposing it, and that growth taking place within a suddenly different and evolving regulatory environment—has added uncertainty to an already volatile period for relations between Muslim Americans and the broader American society.

Land use decisions are contingent. Their outcomes depend on the particulars of each proposal and its likely impacts, or perception of impacts, that its will have on the surrounding community. There is no bright line, nor any set of hard and fast rules to guide local governments or applicants to determine in advance exactly what is appropriate and permissible in every case. Instead, we have guidelines—an outer perimeter—within which individual cases must be adjudicated. In this fluid environment, and particularly in conflict-rife proposals such as mosque developments, judgment and subjectivity can and do influence outcomes. Under the best circumstances, development proposals will be made in the context of a sound comprehensive plan and well-grounded zoning, subdivision, and design regulations. Together, these can clarify the appropriate location and form for the planned development, as well as determine a fair and rational process for its public review. But even with clear regulations on paper, conflictual development proposals require thoughtful negotiation of normal and extraordinary impacts, real

and perceived, among multiple affected parties—the municipality, neighbors and the property owner.

The case studies that follow in Chapters IV-VI demonstrate the difference that a sound and rational development review process can make to conflict management. Indeed, my research shows that strong process enables municipalities to isolate actual, traditional land use concerns from opposition motivated by fear, bias and exclusionary desires. Further, critically, a sound and rational process, enables officials to better balance community interests with the protection of religious liberties. Before the case studies are presented, however, the research questions and hypotheses that shaped this study are presented in Chapter II, and the research methods are described in Chapter III.

## CHAPTER II

### CONCEPTUAL MODEL FOR THE RESEARCH: RESEARCH QUESTIONS, HYPOTHESES AND VARIABLES

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#### INTRODUCTION

As America's Muslim population grows in the suburbs, so too does its need to establish suburban mosques and Islamic community centers to meet religious and cultural needs. As has been discussed, the American Muslim community is one of the most diverse in the world, drawing together immigrants from the Middle East, South Asia, Southeast Asia, Eastern Europe, Africa and more, as well as American converts of all races, and Muslims born in this country; this human mosaic is transforming Islam's notion of sacred space. Suburban American Muslim congregations are reinterpreting the traditional architectural vocabulary of mosques to reflect the multi-ethnic, multi-racial character of the faith, and they are expanding the variety of accepted uses for mosques. That is, in predominantly Muslim nations, Islamically focused educational and social services are available in the broader culture and therefore are not incorporated into mosques. America's secular environment, on the other hand, does not necessarily offer services with the same degree of sensitivity to Islamic moral and cultural values, and in response, congregations increasingly combine such services in multi-purpose suburban mosque complexes. These facilities, in turn, are transforming American suburban landscapes, making Islam manifest for all citizens. Land use regulations come into play at this emerging, increasingly important, cultural interface.

Local planning and zoning appeals boards review construction and rehabilitation proposals submitted by Muslim American communities. Press reports often indicate that securing needed zoning variances, site plan approvals and other permits from such boards is difficult, particularly when the surrounding neighborhood opposes the Muslim community's plans. Resistance based

on fear, bias, and the desire to exclude Muslims, as well as threats of legal action based on the First Amendment's freedom of religion, make for eye-catching headlines. Considered in isolation, such controversies might lead one to assume that the problem is inherent to mosque development. My research challenges this notion, documenting a range of conflict sources that include fear and bias, but which center squarely on the traditional land use concerns that are voiced in many other types of suburban development.

I established a series of research questions and hypotheses that form the conceptual model for my research. Conflict was the categorical dependent variable of the investigation, while a variety of independent variables was shown to shape and delineate conflict.

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## **PART I: RESEARCH QUESTIONS AND HYPOTHESES TESTED**

The research questions are presented below in bold italics. The related hypotheses for each question follow in regular typeface.

### ***A. What factors motivate conflict around mosque developments in America's suburbs?***

- AH1 Land use conflicts around mosque developments are not necessarily based on fear and discrimination or motivated by desires to exclude Muslims.
- AH2 Actual land use concerns surrounding religious properties, and particularly mosques, do not differ dramatically from other proposed new land uses such as low-income housing, schools, commercial establishments or industry.

### ***B. What factors mitigate conflict around mosque developments in America's suburbs?***

- BH1 Strategies used to address and overcome exclusionary tactics in housing and other developments are applicable to conflict management surrounding suburban mosque developments.

- BH2 Community outreach and education efforts on the part of Muslim American communities mitigate conflict around mosque development proposals in American suburbs.

***C. What role does public policy play in the reduction of tensions around mosque developments in America's suburbs?***

- CH1 The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) can catalyze decisions on mosque development proposals, but does not necessarily resolve conflict in those cases.
- CH2 When municipal planning documents—comprehensive plans, zoning ordinances and zoning codes—anticipate religious land uses and neutrally address them, conflict in suburban mosque development cases is mitigated.

***D. What role do public planners and municipal officials play in the reduction of tensions around mosque developments in America's suburbs?***

- DH1 Public planners and municipal officials experienced in the stewarding of religious land use proposals are better able to manage and reduce conflict in suburban mosque developments than those without such experience.
- DH2 Public planners and municipal officials experienced in the management of conflictual land use proposals are better able to manage and reduce conflict in suburban mosque developments than those without such experience.

***E. How does conflict and negotiation in public review processes influence the design choices Muslim American communities make for their houses of worship and community centers?***

- EH1 Public reaction to mosque development proposals influences Muslim American communities' decisions to pursue distinct versus assimilative designs for their religious facilities.
- EH2 Concessions made by Muslim American communities to requirements of local land use officials and requests of neighboring property owners result in greater modifications in the design of their religious properties than to facilities developed by other faiths.



Conflict was the categorical dependent variable of this investigation, manifest in three models: (1) conflict based on traditional land use concerns; (2) conflict based on discrimination and or exclusion; and (3) no conflict.

Drawing on related literature available during my research design process,<sup>137</sup> I classified twenty-two categories of conditions that seemed likely to impact the degree of conflict in suburban mosque developments. They include the development status and demographic character of municipalities; the demographics, history and civic engagement of Muslim American communities; the character of development sites; the elements of mosque development proposals including design, site plan and use patterns; type and nature of land use approval processes; involvement of consulting professionals; the role of compromise; neighborhood outreach and education; and geopolitical circumstances. Within those categories, I identified specific independent variables and hypothesized their individual effects. Both are presented in Table 2.1, below.

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<sup>137</sup> Sources:

"Crescent Concerns: A Few Cracks in Tolerance for Muslims in America," *The Economist*, 6 May 2004, n.p.  
Danielson, Michael A. *The Politics of Exclusion*. New York: Columbia University Press, 1976.

Dear, Michael. "Understanding and Overcoming NIMBY Syndrome," *Journal of the American Planning Association*, Vol. 58, No.3, Summer 1992.

"Into the Suburbs," *The Economist*. Volume 370, no.8366, 13 March 2003, pages 31-21, n.a.

Jamal, Amaney. The Role of Mosques in the Civic and Political Incorporation of Muslim Americans.

Published informally on the web site of Columbia University's "Muslims in New York City Project,"  
<http://www.sipa.columbia.edu/muslim-nyc/research/projects>.

Leinwald, Donna. "Muslims See New Opposition to Building Mosques Since 9/11," *USA Today*, 8 March 2004.

Moore, Kathleen M. *Al-Mughtaribun: American Law and the Transformation of Muslim Life in the United States*, Chapter Six. Albany: State University of New York Press, 1995.

"More Newcomers Bypass Big Cities," in *Christian Science Monitor*. 5 March 1991, n.a.

Pendall, Rolf. "Opposition to Housing: NIMBY and Beyond," *Urban Affairs Review*, Vol. 35, No. 1, September 1999, pages 112-136.

**TABLE 2.1 INDEPENDENT VARIABLES AND HYPOTHESIZED EFFECTS**

<b>Key</b>	
+	<i>indicates that the independent variable was hypothesized to increase the likelihood of conflict</i>
-	<i>indicates that the independent variable was hypothesized to decrease the likelihood of conflict</i>
+/-	<i>indicates that the independent variable was hypothesized to influence the likelihood of conflict, but the direction of influence either was expected to be mixed or could not be predicted.</i>

<b>Variable</b>	<b>Effect</b>
<b>Development Status of Municipality</b>	
"Built out"	+
Rapidly developing	+
Underdeveloped	-
<b>Municipality's Development Experiences</b>	
History of conflict for non-religious land uses (e.g. residential, commercial)	+/-
History of conflict for religious land uses (e.g. churches and synagogues)	+/-
<b>Demographics, Socioeconomic Status &amp; Diversity of Municipality</b>	
Median income	+/-
Median level of education	+/-
Ethnic and racial diversity	+/-
Religious diversity	+/-
Size of local Muslim population	+/-
<b>Characteristics, Demographics &amp; Socioeconomic Status of Muslim Community</b>	
Size	+/-
Median income	-
Balance of blue collar and professional workers	+/-
Number of male members between ages 18-15	+/-
Percentage of children among membership	-
High social status of leaders and/or members within municipality	-
Immigration status of majority of members	+/-
Median level of education	+/-
Ethnic composition	+/-
<b>Locational History of Muslim Community</b>	
Length of time faith community has existed in municipality	+/-
<b>Degree of Muslim American Community's Civic Engagement</b>	
Charitable volunteerism	-
Civic volunteerism	-
<b>Political Experience of Muslim Community's Leadership/Members</b>	
Percent voting in local, state and national elections	+/-
Members running for political office or helping a candidate's campaign	+/-

<i>Variable</i>	<i>Effect</i>
<b>Development Experience of Muslim Community's Leadership/Members</b>	
Past experience in local, non-religious land use development proposals	-
Past experience in past development proposals for masjid community	-
Consideration of potential conflict in decisions related to site selection	-
<b>Predominant Development Site Surroundings</b>	
Single-family homes	+
Multi-family housing	-
Commercial or industrial	-
Park or protected open space	+
Public uses (transportation yards, waste management, etc)	-
Mixed Use	-
<b>Project Type</b>	
Change of use in existing structure with no exterior rehabilitation	-
Rehabilitation of existing structure, including exterior modifications	+/-
Construction of new, purpose-built mosque	+
Addition to existing mosque	+/-
<b>Intended Uses Included in Proposal</b>	
Worship Only	+/-
Social/recreational activities for faith community	+/-
Religious instruction, aka "Sunday school"	+/-
Parochial elementary and/or high school	+
Funerary facilities	+
Social services (e.g. soup kitchen, food bank, medical clinic)	+
Social/recreational activities open to non-Muslims	+/-
<b>Architectural Design for Proposed Islamic Center</b>	
Distinct (recognizable as building affiliated with Islam)	+/-
Assimilative (in keeping with dominant expectations for religious spaces)	-
Degree of design harmony (color & material palette) with surrounding architecture	-
Relationship in terms of mass to surrounding architecture	-
Relationship in terms of height to surrounding architecture	-
Required variances for design under existing zoning	+
<b>Site Plan</b>	
Proximity of mosque to surrounding structures	+
Amount and quality of landscaping or other screening	+/-
Accommodation of parking	+/-
Consideration of traffic flow	+/-
Consideration of lighting requirements and impacts	+/-
Required variances for site plan under existing zoning	+
<b>Anticipated Attendance Patterns for Daily Prayers and Religious Holidays</b>	
Average number of adults attending 'Isha prayers (final daily evening prayers)	+/-
Average number of adults attending Jum'a prayers (Friday congregational prayer)	+/-

<b>Variable</b>	<b>Effect</b>
Average number of adults attending Eid festivities	+/-
Regular attendance by women	-
Gender-segregated facilities	+
<b>Formal Review Process for Development Proposal</b>	
Use variance, special permit or similar required for religious uses in zone	+
Single review/approval process	+/-
Multiple review/approval processes	+/-
Level of project review for final approval (e.g. planning board v. legislative council)	+/-
Amount of allowable public comment during review	+/-
Nature/outcome of past proposals involving religious properties	+/-
Lawsuit pursued by congregation, municipality, or neighbors	+
Local, state or national landmark or site located in local landmark district	+
Not officially recognized landmark, but valued by neighborhood and/or municipality	+
<b>Informal Review Process for Development Proposal</b>	
Comment invited from community board/s, neighborhood associations/s, citizen coalition/s	+/-
Mediation by municipal planning staff or local government representative	-
Mediation by outside party	-
<b>Involvement of Professionals In Design/Planning Process on Behalf of Muslim Community</b>	
Structural Architect	+/-
Landscape Architect	+/-
Engineer	+/-
Traffic Consultant	+/-
Lawyer	+/-
<b>Status of Professionals Assisting Muslim Community</b>	
Muslim	+/-
Paid	+/-
Pro-Bono	+/-
<b>Representation of Muslim Community Public Hearings</b>	
Professional consultants as speaking representatives	+/-
Only Muslim community's leadership participates in public hearings	+/-
General members of Muslim community participate in public hearings	+/-
Female members of Muslim community participate in public hearings	+/-
<b>Spirit of Compromise</b>	
Muslim community's willingness to compromise on design, use or site plan elements	-
Muslim community's willingness to alter design elements symbolic of Islam	-
Local government's willingness to compromise issues of concern	-
Neighborhood's willingness to compromise on issues of concern	-

<i>Variable</i>	<i>Effect</i>
<b>Outreach/Community Education Undertaken by Muslim Community Before/During Review</b>	
Open meetings held to educate about development proposal	-
Participation in private, small-group sessions with neighbors/opponents	-
<b>Geopolitical Climate</b>	
Project's proximity in time to the events of September 11th, 2001	+
Project's geographic distance from New York, Washington DC and Eastern PA	-
Project's proximity in time to the US invasion of Afghanistan & Iraq	+
Local connection to wars v. Afghanistan & Iraq (e.g. deployed National Guard unit)	+
Project's proximity in time to incidents of hate crime or bias against Muslims	+
Status of national attitudes toward Muslims/Islam during project review	+/-

Although the independent variables are presented in the table as distinct influencing factors, this abstraction does not express the reality of conflict in suburban mosque developments, or that of conflictual land use proposals generally. The analysis presented later in this work will demonstrate that interplay among the independent variables was frequent and complex in the mosque developments I investigated, resulting in multi-dimensional conflict scenarios and a wealth of instructive outcomes for planners, municipal officials, faith communities and neighborhoods.

The next step in my research design was to determine an investigation strategy that would best test the hypotheses I established and address my overarching research questions. As will be described in the methodology chapter that follows, a case study strategy was employed.

## CHAPTER III METHODOLOGY

### INTRODUCTION

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After comparing case study, survey and experimental research methods, I determined that a case study approach would be most appropriate for examining suburban mosque development controversies. First, my subject was current, not historical. Second, the subject would be difficult to separate from its contemporary and local context, as might be done in an experimental research approach. Third, mosque development conflict scenarios each have unique circumstances, in which there are more variables of interest than data points. A survey approach would have required me to artificially limit the number of variables to be analyzed and therefore would have limited my findings. Additionally, the myriad variables at play in mosque conflicts seemed likely to converge in complex combinations and from multiple sources of evidence. To manage the volume and character of both data and evidence, I knew I would need to develop a well-reasoned set of research questions and hypotheses to guide my collection and analysis.<sup>138</sup> A case study approach would enable a flexible and appropriate response to all of these conditions. Indeed, a multiple case study approach made possible a rich, multi-faceted, and detailed depiction of the review and development processes for several Islamic Centers. The outcomes of those studies, in turn, shaped recommendations that are generalizable to a broad spectrum of property development scenarios for any faith group.

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<sup>138</sup> See Robert K. Yin. *Case Study Research: Design and Methods, Third Edition*, Applied Social Research Methods Series, Volume 5. Thousand Oaks, CA: Sage Publications, Inc, 2003. Pages 1-17.

The Council for American Islamic Relations (CAIR),<sup>139</sup> a civil rights advocacy group, maintains a daily digest of national news coverage related to Muslim Americans. Included in its postings are print and broadcast coverage of Islamic Center developments. Beginning in March 2001, I created a running database of all references to development proposals and responses to them, recording location, contact names, development type (e.g. worship space, school, cemetery, community center, etc.), review type (e.g. zoning board, planning board, historic review board), key opposition issues identified in the coverage, and whether or not the coverage indicated that the case was conflictual. This list formed the pool from which I identified case study candidates.

To narrow the candidate pool, I focused on Islamic Center proposals made within eighteen months of September 11, 2001, increasing the likelihood that the cases were subject to similar pressures from national and international geopolitical events. For comparability among cases, I selected Sunni Muslim American communities of primarily immigrant-origin memberships,<sup>140</sup> located in suburban districts—the areas of fastest growth for the Muslim American population.<sup>141</sup> Geographic distribution, neighborhood type, and the form of public review (e.g. use variance, site plan review, and design review) were also considered, as well as the likelihood that a development would test the greatest number of study hypotheses. Ultimately, final selections depended on the willingness of municipal officials, Muslim community leaders and surrounding neighborhood members to participate in the study—given the unique aspects of each case and the specificity of data I sought, I could not offer confidentiality. A short list of six candidates was

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<sup>139</sup> [www.cair.org](http://www.cair.org)

<sup>140</sup> Because there are so few Shi'ite Muslims in the US, there are comparably few mosques serving that denomination; most American mosques follow the rituals and doctrines of the orthodox Sunni denomination. However, in places where there is not an exclusively Shi'ite mosque, it is not uncommon for Shi'ites to practice alongside Sunnis in their mosques..

<sup>141</sup> See introduction.

identified and contacted,<sup>142</sup> three were selected. Each seemed to promise a particular window on land use conflict around mosque development.

Press accounts of review process for The Muslim American Community Association in Voorhees, New Jersey (20 miles outside Philadelphia) implied the use of exclusionary tactics not only by neighborhood opponents, but also by the zoning board adjudicating the application. Coverage also specifically referenced the applicant's invocation of the Religious Land Use and Institutionalized Persons Act of 2000. The single review process for the Islamic Center of the Northeast Valley in Scottsdale, Arizona was conducted by a design review board and seemed focused mainly on questions of aesthetic compatibility of a mosque with local architecture and landscapes. Press coverage suggested that design questions might have served as proxies for larger issues of cross-cultural compatibility and the integration of immigrant communities into suburban neighborhoods. Finally, the Muslim American community that founded the Islamic Center of Savannah, Georgia first worshipped in a rehabilitated single-family home. That structure was firebombed in 2003. However, press accounts of the public review process for the purpose-built structure that replaced the home did not relate any controversy or public opposition. The Georgia case seemed useful as a contrast study for the first two cases.

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<sup>142</sup> The case studies ruled out were the following:

- (1) Folsom Islamic Society, Folsom, CA—Project stalled due to lack of funding.
- (2) Islamic Organization of North America (IONA), Warren, MI—Through the city attorney, the municipality refused to participate. Although the complexity of this community's conflict would have made an interesting case study and FOIL could have been used to secure public documents, I felt that I would not be able to produce an account comparable to the studies in which I had access to public officials and the range of their views.
- (3) Hudson Valley Islamic Community Center, Mohegan Lake, NY—Although press accounts suggested that this case might be interesting given its proximity to New York City (i.e. the Ground Zero site), my inquiries determined that there was virtually no controversy surrounding the case and therefore it would not have provided sufficient opportunity to test study variables.



## **PART II: PRIMARY AND SECONDARY DATA COLLECTION FROM PUBLIC RECORDS & PRESS REVIEW**

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The first step in my data collection was to read available press accounts of each development proposal review. Print coverage and recordings of broadcasts gave me a sense of the degree of conflict around the case, as well as an interpreted version of its sources. It also helped me to identify potential interviewees.

Next, I reviewed public files contained in the municipal planning departments. Available materials and my access to them varied across the subject developments, resulting in case study narratives that are not equally balanced. In Voorhees, New Jersey, I was given entirely unfettered access to municipal records. Because the municipality feared a lawsuit in the case, staff had meticulously stored all related materials and communications, down to “message received” slips. The township administrator was supportive of my project, and arranged for a work space to be dedicated for me. All ZBA and building department files were made available to me, including internal and public correspondence, minutes, code books, file maps, and, significantly, audio recordings of all but one hearing (which had been lost). I spent the equivalent of almost three months there, working full-time sifting through the written record and transcribing hearing recordings. The planning staff were willing to explain elements of the application and the local land use process to me, and were able to give insights into the individuals involved in the case on all sides.

Because so many resources were available to me in Voorhees, I was able to gain an understanding of the case almost as if I had been present at the hearings myself. Additionally, because of travel convenience to Voorhees and available local housing, I was able to spend long periods of time of time there, meeting with some interviewees several times. Lacking time pressures, they were able to offer deep insight into the case, and I was able to more easily

address follow up questions than I could for the Scottsdale and Savannah cases. Another contrast in Voorhees is the number of stakeholders who were willing to meet with me. Nearly everyone I approached – opponents, supporters, ZBA members—was willing to meet with me. I was able to interview the Muslim community’s president; four ZBA members, including the chair; the municipal attorney and consulting engineer, along with two zoning staff members; the Islamic Center’s attorney, consulting planner and architect; six neighborhood opponents and the organizer of a supporting inter-faith alliance.

For a number of reasons, my access in Scottsdale and Savannah was more limited. Consent was the primary issue, as will be described for each case. Distance and expense were other limiting factors. Unlike Voorhees, to which I could drive and had access to free housing, in Scottsdale and Savannah I had to fly to the municipalities and stay in hotels. As such, I was able to devote about a week to my work in each location. However, I was able to use Freedom of Information Law requests to review pertinent public documents in advance of my travels, which preserved time on location for interviews.

In Savannah, even if I had had time to review the public files myself, I would not have been able to; planning staff preferred to copy and mail to them to me. While I believe I was provided sufficient records to understand the important land use issues and actions of the review process—staff reports, meeting minutes, maps, public comment records—I cannot know what might have been omitted from the files; for example, I was not given any inter-departmental communications, despite several requests. Of course it is possible that such correspondence was not retained, but I cannot know for certain; without them, I was not able to gain a sense of non-public debates or exchanges. As is detailed in the chapter, it seems as if there had been internal disagreements in the handling of the case. I also was not able to listen to or watch case hearings myself; I was told that recordings of the hearings were not available, even though they

had been broadcast on local cable television channel dedicated to municipal proceedings. Further, the two staff members with whom I met were not willing to have their interview recorded. They declined to answer questions about some potentially controversial elements, and asked to review drafts of the chapter. Additionally, the one review board member who consented to an interview was accompanied by a staff member, presumably to monitor his responses. I believe that this hesitation had little to do with the mosque proposal itself. Rather, as the reader will learn, I suspect that it had more to do with potential unfavorable revelations about municipal process and procedure, as well as the involvement of a former member of the planning staff as a consultant on development applications generally. The Savannah case is also limited by the fact that there was no public opposition, or even any comment, on the mosque proposal. As a result, the perspective of neighboring property owners in the Savannah narrative is minimal as compared to Voorhees and Scottsdale. Had I been able to spend more time in Savannah I may have been able to approach neighbors in person to seek comment on the mosque since its construction.

By contrast, public files for the Scottsdale study were easily accessible via the city's excellent website; even staff emails and incoming call messages were available electronically. Also, I was able to readily assemble municipal planning context for Scottsdale because a remarkable number of historic plans and reports have been scanned and uploaded. However, the most vitriolic communications regarding the mosque, sent to planning staff and review board members and cited in interviews, were not part of the electronic record. A researcher looking only at the public record, therefore, might be left with the impression that there was little controversy based on fear or bias in the case. The lead planner for the case had since left the city and was surprised to hear that records relating to menacing phone messages and police assessments of threat had potentially been expunged; I was not able to determine why the full

record was not available online. Still, the amount of information provided electronically allowed me to gain a solid sense of the case in advance of my research visit.

My ability to interview those neighbors most directly impacted by the Scottsdale Islamic Center development was limited by two factors. First, there had been a good deal of property ownership change around the mosque. Interviewees reported that in the mid-2000s there was significant turnover in the neighborhood as owners attempted to take advantage of the skyrocketing prices of the decade's real estate bubble. I conducted my interviews in the summer of 2009, at the height of the market collapse. Although the neighborhood in which the mosque is located seems to have been mostly insulated from the foreclosure catastrophe that struck much of Arizona, I speculate that some of the vacancies and relocations may have resulted from it. Some of the most vocal opponents did remain, but they either did not return my calls or simply refused to meet with me. Those that gave reasons for refusing me indicated that they simply didn't want to revisit to the drama they had experienced, or that they had fears, despite my reassurances, that I was only interested in depicting them as bigots. One of my inquiries was met with a request to meet entirely off the record. As a result, my account of the opposition is based on the available written record for those living adjacent to the site and the interview accounts offered by two residents living farther from the development site. Again, had I been able to spend more time in Scottsdale building trust and credibility among the neighbors, I suspect that more would have been willing to meet with me.

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### **PART III: INTERVIEW STRATEGY**

I identified five classes of likely interviewees—development stakeholders whose varied viewpoints would make possible the most thorough assessment of the case studies: (1) leaders

of the Muslim communities—presidents and governing boards; (2) professionals advising the Muslim communities—consulting planners, attorneys, architects, and engineers; (3) process administrators—public planners; municipal review board members, municipal attorneys and elected officials; (4) members of impacted communities, including neighboring property owners who both opposed and supported proposals; and (5) members of supporting coalitions and advocacy groups, including interfaith organizations.

I developed interview questions in the process of designing a telephone survey that would have been administered to a sample of Muslim communities across the nation. Although that survey was not completed because of financial constraints, many of the questions remained viable for the case study research and were incorporated into my scripts. I sought the assistance of three categories of reviewers to scrutinize proposed questions. Their comments ensured the thoroughness, reliability, and clarity of questions, as well the avoidance of bias and leading questions. The reviewers were: the director of Cornell University's Survey Research Institute (SRI)<sup>143</sup>; leading scholars of Islam in America,<sup>144</sup> and a focus group of Muslim community leaders who had been part of a conflictual Islamic Center development pre-9/11—the Islamic Center of Long Island in Westbury, New York. The focus group was especially valuable because the participants were particularly attuned to issues related to cultural sensitivity, as well as accessibility for the layperson and speakers of English as a second language.

Categories of interview questions included:

- the individual's role in the Islamic Center review and prior development experience, including religious properties of any variety
- municipal officials' preparedness to address religious development proposals generally and a mosque specifically

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<sup>143</sup> <https://sri.cornell.edu/sri/index.cfm>

<sup>144</sup> Scholars included: Dr. Ihsan Bagby, Dr. Amaney Jamal, Dr. Akel Kahera, Dr. Aminah Beverly McCloud, Dr. Kathleen M. Moore and Dr. Suleyman Nyang.

- knowledge of RLUIPA before and during the review process and the influence it had on deliberations
- previous experience with Muslims and mosques
- development status of the host neighborhood
- comparison of conflict surrounding mosque proposal with other conflictual land use proposals
- traditional land use issues raised in the review process
- role of fear and/or bias in the review process
- parties' willingness to compromise
- effectiveness of conflict management strategies deployed by municipal officials
- public education/outreach efforts undertaken by Muslim community
- role of interfaith and/or other supporting coalitions
- compatibility of project/design as proposed, as approved and as built
- degree to the which completed project has been integrated into and contributes to the host neighborhood
- lessons for other municipalities/neighborhoods/Muslim communities

Most interviews lasted approximately ninety minutes, though some extended into several hours if the speaker was particularly engaged. I was usually able to gather the information I needed in a single session, but in some cases, particularly in Voorhees, the complexity of the case required one or several repeat sessions. Four interviews were conducted by phone or in electronic correspondence.

All told, I interviewed forty-five individuals for the research: twenty one in Voorhees, sixteen in Scottsdale and eight in Savannah. The weighting of the numbers reflects the access I had in each study site. In Voorhees, all but one person I made contact with was willing to meet me, and of those six were neighbors. In Scottsdale, for reasons stated above, only two of the sixteen were neighborhood residents. In this research sites I had excellent access to municipal officials, consulting professionals and leaders of supporting coalitions. In Savannah, as stated earlier, I had limited access to municipal officials and no members of the public since none had participated in or commented on the mosque proposal. I was pleased that the architects for all three Islamic Centers were willing to meet with me and share their preliminary and final drawings. Their contributions allowed a nuanced assessment of design issues in the research.

By using a consistent study procedure and interview format, I was able to qualitatively measure the impact of proposed independent variables inside each case study. Then, I used cross-study synthesis to analyze data from the three source groups (press coverage, public records and interviews) and emphasize similarities and differences among the mosque developments. I considered my findings in the theoretical contexts of land use planning and law, conflict management, and Islamic architecture, then drew conclusions that are generalizable to all three areas of study.

I have attempted to present the mosque development narratives in roughly consistent topic order so that the reviewer can more readily draw his or her own comparisons among the sites while reading. For each case, a brief municipal history is offered; the planning culture is described; the history and demographics of the local Muslim community are detailed; neighborhood and site descriptions are presented; the format of the public process is reviewed; and a conflict analysis is conducted.

Biases in the study may have resulted from certain characteristics of the stakeholders who participated in research interviews.

### ***Muslim American Communities***

One might argue that the Muslim communities I selected were predisposed to participate in a study such as this. They fall squarely into the Muslim American mainstream, as has been discussed—middle class or better, well educated, professionals engaged in American civic life

to some degree. They had already participated, through land use hearings and press coverage, in a very public screening of their faith and their activities, so they may have considered my inquiry a natural extension of their ongoing engagement. They were not faith communities which shied from controversy or media spotlight in the way that a less politically empowered congregation, such as one composed of very recent immigrants or African Americans, may have done.

Still, that the three Muslim communities were willing to submit to scholarly scrutiny may reveal certain other predispositions in the congregations. Even since before the attacks of September 11<sup>th</sup> 2001, local law enforcement agencies and the FBI have infiltrated and surveilled Muslim communities, seeking leads on potential sources of domestic terrorism. In some cases, accusations of entrapment have been levied. In this environment, mistrust of researchers has occurred.<sup>145</sup> The Muslim American communities that agreed to participate in my study clearly did not fear outside investigation and seemed trusting of scholars generally. Specifically, they trusted me. I am a non-Muslim and a woman. I was given unfettered access to the lay leaders and the Islamic center facilities, including prayer halls; I was invited to observe prayers in all three communities and attend a *khutbah* (sermon) in two. This openness to scholars generally and to me specifically suggests that the subject faith communities have mainstream political leanings that embrace the tenets of American citizenship. It further indicates a moderate approach to the Islamic faith.

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<sup>145</sup> As this dissertation was being completed, the Associated Press broke a story about a potentially illegal intelligence gathering collaboration between the CIA and the New York Police Department that uses informants to monitor mosques and activities in predominantly Muslim neighborhoods of that city. Although the revelations about CIA and police department cooperation are new, the monitoring of mosques is not. As early as 1987, Haddad and Lummis observed a mistrust of researchers among some Muslim Americans, which they attributed to law enforcement infiltration. See:

"With CIA Help, NYPD Built Secret Effort to Monitor Mosques, Daily Life of Muslim Neighborhoods," *The Washington Post*. Published 8/24/2011; accessed 9/2/2011 via [http://www.washingtonpost.com/national/with-cia-help-nypd-built-secret-effort-to-monitor-mosques-daily-life-of-muslim-neighborhoods/2011/08/24/gIQA87haJ\\_story.html](http://www.washingtonpost.com/national/with-cia-help-nypd-built-secret-effort-to-monitor-mosques-daily-life-of-muslim-neighborhoods/2011/08/24/gIQA87haJ_story.html).

Haddad, Yvonne Yasbeck and Adair Lummis. *Islamic Values in the United States: A Comparative Study*. New York: Oxford University Press, 1987. Page 10.



### ***Municipal Officials***

From a municipal perspective, bias exists because I was not able to include municipalities where potentially unlawful actions took place in an Islamic Center review—I could not secure permissions to interview municipal staff in such locations. Although the selected case studies were all problematic on some level, it is my assessment that the municipal officials who consented to be interviewed had discharged their duties to the best of their ability and strove to serve both the subject Muslim communities and the public. Like the Muslim communities, they were open to scholarly scrutiny. Some were limited by a lack of professional experience, compromised public processes or procedural errors, but I believe that most did what they could to ensure fair public reviews for the Islamic Center proposals and attempted to steward the process to positive outcomes for all parties.

### ***Opponents to Development Proposals***

Although the case studies demonstrate a range of motivations for the opponents who consented to be interviewed, they seemed to share common characteristics: a capacity for introspection and receptivity to alternate viewpoints. The study reflects a general tendency for opponents to have had their positions changed by the public process and outreach efforts. Importantly, though, not every opponent I approached agreed to meet with me. Those who rejected my requests tended to be individuals who were among the most vehement respondents to the development proposals. It may be that their initial attitude toward the proposal and the Muslim community did not change; however, without their participation I cannot conclusively say. It might be argued, therefore, that my study is biased in favor of individuals who are predisposed to accepting new ideas.

With the intellectual context for the study established, the research questions and hypotheses framed and the methodology described, I now turn to the case studies.

## **CHAPTER IV**

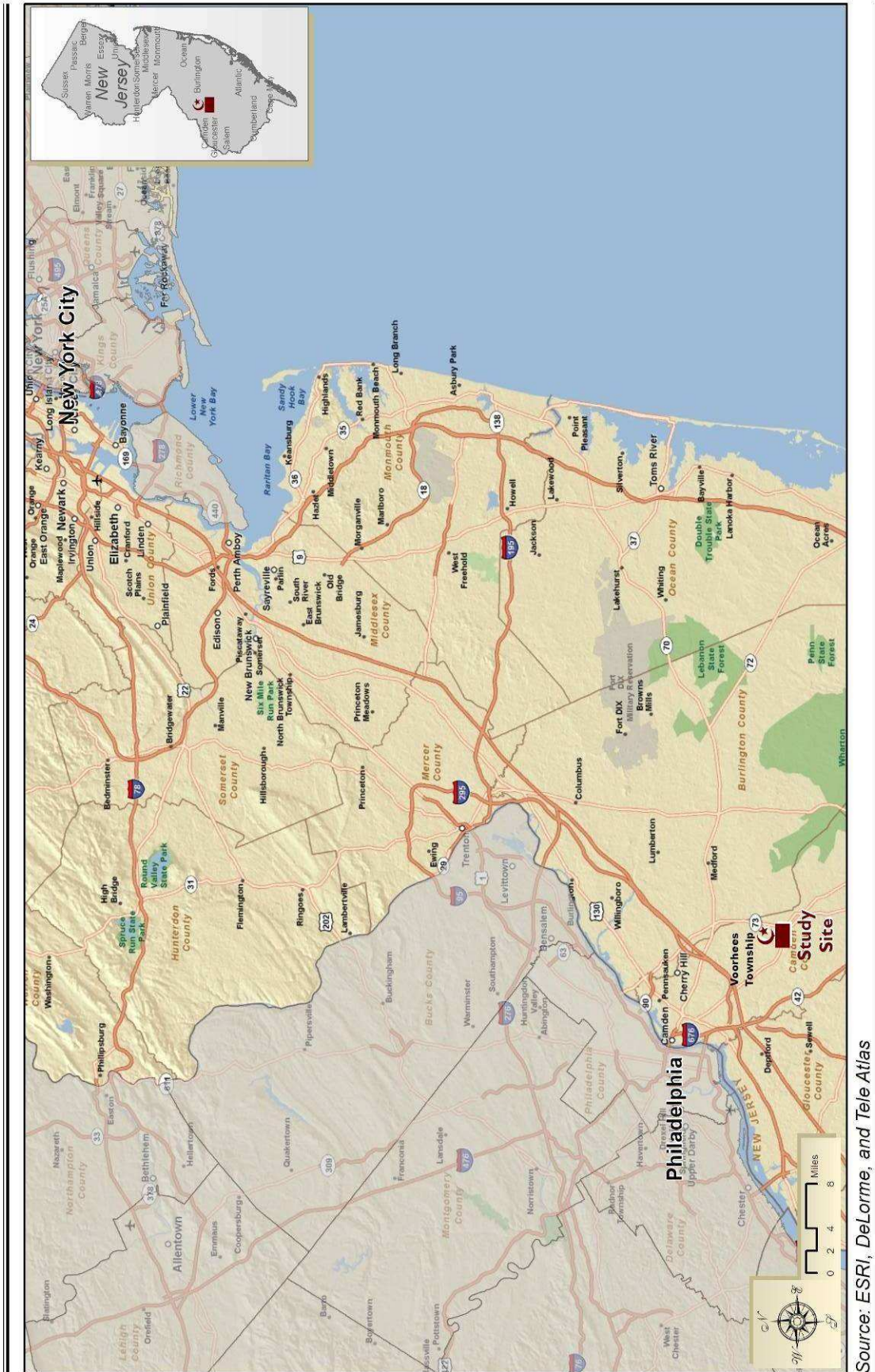
### **MUSLIM AMERICAN COMMUNITY ASSOCIATION, VOORHEES, NEW JERSEY**

#### **INTRODUCTION**

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Voorhees Township, New Jersey is a dense suburban community located twenty miles east of Philadelphia on the Interstate corridor between New York City and Washington, DC (see Map 4.1). Since the 1980s, it has experienced significant population growth and development expansion. Its demographic profile has diversified as well, and includes a thriving Muslim community. Between March 2003 and November 2004, Muslim leaders sought public approvals to build a mosque and Islamic education center in the township. The five land use hearings that took place in that period were complex, multi-layered and carried out in the glaring spotlight of regional and national media coverage. Township officials had never received an application to develop a house of worship for Muslims. Although the township staff, consulting professionals and some review board members previously had considered development proposals from other religious organizations, they had no experience with and little knowledge of the design and use elements that are unique to Islam and mosques.

The high level of public participation in the mosque review process was unprecedented, and the hearings were characterized by tension. Media accounts relate a process marred by the exclusionary tactics of neighbors and public officials. Speculation abounded regarding prejudice against Muslims in the post-9/11 political climate and in the early days of the American-led wars in Iraq and Afghanistan. A more careful study, however, reveals that although the prejudicial desire to block the mosque development motivated some parties, legitimate land use concerns were also central to opposition. Procedural weaknesses, limited legal guidance provided to the



Source: ESRI, DeLorme, and Tele Atlas

Map 4.1: Area Map Locating Voorhees Township, New Jersey

township, and the applicant's strategy choices contributed substantially to the turmoil and to the ultimate, modified outcome of the application.

The following description of the Voorhees mosque review process first offers essential background information on planning structures in the state of New Jersey. Then, the township's history and demographic profile are briefly reviewed. Next, the mosque's public hearings are described and outcomes scrutinized, and finally, the conflict analyzed.

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**PART I:**

**BACKGROUND: NEW JERSEY, HOME RULE AND LAND USE PLANNING**

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Any examination of land use planning issues in the state of New Jersey requires an understanding of the concept of "home rule" and its impact on local governance and municipal management. Such knowledge is essential to analyzing the Voorhees mosque development.

In terms of governance, states divide into two categories: Dillon's rule states and home rule states.<sup>146</sup> The general division in governing theory hinges on the question of how local populations are best ruled: by local governments whose authority is regulated by the state, or by independent, self-determining local bodies. In Dillon's rule states, local governments receive their authority from state legislatures, which expressly delegate powers. Developed in the mid-19<sup>th</sup> century in response to widespread corruption within municipalities, this model assumes that

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<sup>146</sup> An exhaustive examination of Dillon's rule versus home rule is beyond the scope of this chapter. Summary information was drawn from the following sources:

Diane Lang. "Dillon's Rule and the Birth of Home Rule," originally published in the December 1991 edition of *The Municipal Reporter*, accessed via the website of the New Mexico Municipal Reporter (<http://nmml.org/Dillon.pdf>) 02/06/2008.

Albert J. Wolfe. A History of Municipal Government in New Jersey Since 1798. Wolfe is a former Bureau Chief of the Bureau of Municipal Information for the New Jersey League of Municipalities. Accessed via the website of The New Jersey State League of Municipalities (<http://www.celdf.org/HomeRule/DoesmyStatehaveHomeRule/NewJerseyHomeRuleandMunicipalGovernment/tabid/416/Default.aspx>), 02/05/2008.

a local government does not have a specific authority unless it was previously granted by the state legislature. Municipal governments must work within boundaries established by the state, and as a result, innovative local governance and creative problem solving can be limited. In order to move beyond mandated boundaries, municipalities must petition state assemblies to enact enabling legislation to allow structural, procedural or regulatory modification. Positively, the broad authority retained by Dillon's rule states facilitates the standardization of practice across municipalities as well as the implementation of regulations that benefit larger geographies and populations, such as regional planning initiatives.<sup>147</sup> From the point of view of services, jurisdictions within Dillon's law states are often thought to more effectively create and administer consolidated functions such as inter-municipal school districts and public safety networks.

Conversely, in home rule states municipalities are considered to possess powers unless they have been denied them specifically by a state legislative action or the state's constitution. The logic of home rule holds that governance is best conducted at the smallest levels of jurisdiction, where the individual has the greatest access to governmental institutions and therefore has the best opportunity to influence decisions that impact his or her life. The roots of home rule extend back to America's rural Colonial era, when population centers, under royal charter, incorporated and determined their own governance through the vehicle of the town meeting. This was the norm of American governance from which Dillon's rule states deviated in 1868. However, in states like New Jersey which retained home rule, its format evolved to meet the demographic changes of the growing nation. As population growth made the town meeting an unwieldy

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<sup>147</sup> Jesse J. Richardson, Jr., et. al. Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management," Executive Summary, January 2003. Accessed via the Brookings Institution website ([http://www.brookings.edu/reports/2003/01metropolitanpolicy\\_richardson.aspx](http://www.brookings.edu/reports/2003/01metropolitanpolicy_richardson.aspx)) 02/06/2008. Note that the article finds the division among states by either form of governance is not exact, as elements of each system seem to be at play within states themselves, with overlap in controls between municipalities and state governments.

mechanism for governance, local representative bodies emerged, with elected and appointed officials administering local affairs on behalf of citizens.<sup>148</sup>

Given their long history with home rule, residents of New Jersey are accustomed to having a good deal of direct control over a wide range of governmental functions. Statutory regulations do exist for such activities as taxation, education and land use control, of course, but local authority is considered paramount. As a result, New Jersey is a state famous for duplication of effort and inefficiencies in spending. The 566 municipalities,<sup>149</sup> for example, each support their own fire and police departments, school districts, and land use planning structures. They also each require an infrastructure of officials and support staff to maintain municipal functions. Such duplication of services, while allowing a good deal of local autonomy, places a significant financial burden on governments, as they are not able to take advantage of the efficiencies of scale that might be gained in regional alliances. To fund independence, therefore, local property taxes in New Jersey are among the highest in the nation. Despite the costs, focused, immediate control of municipal affairs is generally valued by New Jersey residents and is guarded carefully against attempts to consolidate government at the regional and state levels.

The impact of New Jersey's home rule on land use planning is significant in several respects. The appointments of planning officials and others—township attorney, attorneys advising planning and zoning boards, and consulting planners and engineers—are made by the presiding officer in a municipality. That officer is usually a mayor, and he or she and his or her appointees sit of a short one-year term.<sup>150</sup> In order to receive appointments, and ensure their continuance with a re-elected mayor, behooves consulting professionals to maintain

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<sup>148</sup> Wolfe, *Op. cit.*

<sup>149</sup> There are five types of local municipalities in New Jersey: borough, township, city, town and village. Under the Home Rule Act of 1917, these categories, regardless of geographic size or population, were recognized as equal and given authority for self-governance. "Types and Forms of New Jersey Government," the website of The New Jersey State League of Municipalities (<http://www.njslom.org/types.html>), 02/05/2008.

<sup>150</sup> Members of legislative bodies sit for 3-5 year terms.

relationships with elected officials and to be known within local partisan structures. Further, these professionals can be retained by multiple municipalities concurrently, and must juggle the priorities and complexities of each. The opportunity for error in this scenario is plain. However, it could be argued that frequent turnover would allow municipal officials to weed out underperforming consultants more readily than they could public employees with civil service and/or union protection.

The concentration of skilled, specialized planning functions in a consultancy structure means that municipalities can opt to hire staff with little formal planning training or prior related experience—and therefore lower salary demands—for the day to day administrative functions of planning departments. It is not unexpected that these staff might lack the broad view that would enable them to anticipate challenges or weaknesses in development proposals which might be controversial or otherwise problematic in public review. Even if staff do have such professional capacities, they may not be empowered within the application management process to intervene with an applicant in advance of public hearings. The implications of this consultancy/staff hierarchy on the Voorhees mosque review process will be described as the chapter progresses.

Voorhees Township<sup>151</sup> is accessed via the New Jersey Turnpike and Interstate 295, and traversed by state routes 70 and 73 (see Map 4.2). A large segment of the population of approximately 28,000 people commute to financial sector jobs and academic positions in Philadelphia, while a robust local economy consisting primarily of management, retail and service employs the balance of working adults. The township was incorporated in 1899, bringing together a variety of small, agrarian communities. That farm economy persisted until the 1950s, when the post-War World War II population and housing booms dramatically transformed fields to subdivisions. As the wounds of urban decline and white flight caused Philadelphia to bleed population through the 1960s and 1970s, Voorhees grew at a rate of 214% in the same decades, rising from 3,784 residents to 12,919. The appeal of a strong public school system, recreational amenities, low incidents of crime, and large-lot development continued in the 1980s, when the township added more than a thousand new citizens per year. Through the eighties and nineties the population nearly doubled, approaching 30,000. Pressures to fund public services for an exploding population and at the same time address residents' ever-increasing tax burdens led to commensurate commercial development, largely in the form of retail plazas anchored by national chains. Aerial photos taken each decade between 1955 and 1995 dramatically illustrate the rapid consumption of open space by curving, dense housing developments, sprawling shopping centers, parking lots and ever-widening arterial roadways.<sup>152</sup>

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<sup>151</sup> Information in this section drawn from the following sources:

Geri Egizi Borbe, "History of Voorhees," posted with footnotes on the Voorhees Township website ([www.voorheesnj.com/content/history](http://www.voorheesnj.com/content/history)), accessed 01/16/2008.

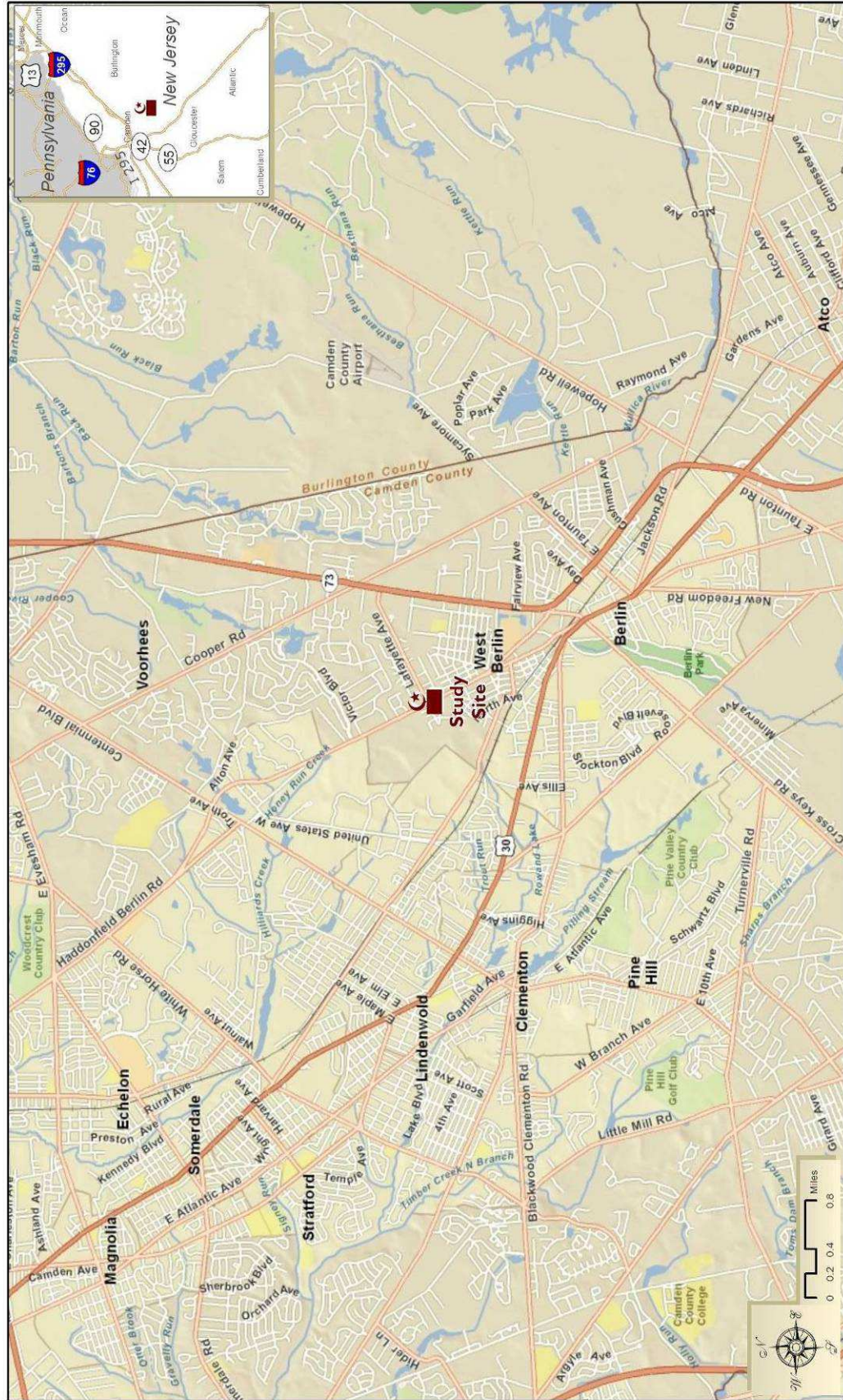
1980 US Census data on population and race for Voorhees Township, extracted from Census CD 1980, GeoLytics, Inc. East Brunswick, NJ.

1990 US Census data for Voorhees Township, tables P009, H026, DP-1, STF-3. Accessed via [www.factfinder.census.gov](http://www.factfinder.census.gov), 01/22/2008.

2000 US Census data for Voorhees Township, tables DP-1, DP2, DP-3, DP-4. Accessed via [www.factfinder.census.gov](http://www.factfinder.census.gov), 01/22/2008.

<sup>152</sup> The photographs were commissioned by Voorhees Township and hang in the offices of the planning department. Photographer credit not available.





Source: ESRI, DeLorme, and Tele Atlas

Map 4.2: Detail Map, Voorhees Township, New Jersey.

Sixty-four percent of extant housing units in 2000 were built between 1970 and 1989. Facing bursting public schools and a looming estimate of complete build-out by 2015, the township undertook a comprehensive planning process in 1998, emphasizing land preservation and limits on new housing development. Unprecedented numbers of residents participated in public sessions and enthusiastically received a simplified zoning code and enforceable limits on growth.<sup>153</sup>

At the time of the mosque proposal, the economic profile of Voorhees citizenry was middle and upper-middle class. Average family income as reported in the 2000 US census was nearly \$87,000, and around 30 percent of families were earning between \$100,000 and \$200,000. The population was well-educated; 26% of adults held undergraduate degrees and another 20% earned graduate or professional degrees. The majority owned the homes they lived in, with a median value of \$180,000. These census statistics illustrate the slogan that Voorhees earned at the peak of its housing boom: “the address for success.”

Although the population of Voorhees is, and historically had been, predominantly white, in the 1980s and 1990s non-white groups had begun to make homes in the township and participate in community life. The mosaic of race and nativity that existed during the mosque proposal is captured in the 2000 Census. The largest non-white racial group, Asians, constituted 11% of the population, with “Asian Indians” representing nearly half of the category.<sup>154</sup> The number of South Asians living in Voorhees since the 1990 census doubled, and increased seven-fold since 1980. It is also noteworthy that of the approximately 3,700 foreign-born residents of Voorhees in 2000, 65% identified as Asian. The next largest ethnic group in the 2000 census was African

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<sup>153</sup> Joseph S. Augustyn, AICP. Associate, Alaimo Group Consulting Engineers. Telephone interview with the author, 01/23/2008.

<sup>154</sup> It is important to note that definitions of race categories may have been modified by the census bureau over time and therefore the comparison of counts of “Asians” and “Asian-Indians” from census to census may not be direct. The data is provided here to provide a sense of demographic trends in Voorhees Township over a period of twenty years.

Americans at 8.5%, with all other groups constituting less than 2% each. Within the South Asian minority is a Muslim community, which organized in the late 1990s and early 2000s and brought forward the subject proposal to develop a mosque in 2003.

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**PART III:**  
**THE VOORHEES MUSLIM COMMUNITY<sup>155</sup>**

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At the time my research in Voorhees was being conducted (late 2006-early 2007), the Muslim community in and around the township was predominantly South Asian and specifically Pakistani, but also included Syrians, Palestinians, and a growing number of European-American converts. It was a highly-educated and accomplished population, consisting largely of doctors, engineers and other professionals. Contrary to stereotypes about Muslims, many of the women in the community were recognized professionals in their own right. It is difficult to accurately quantify the number of Muslims in Voorhees for several reasons: religious affiliation is not recorded in the US census; not all Muslims regularly attend services at mosques (the most logical point of data collection); and, because formal membership in a mosque is not a requirement of Islam, attendance records may not accurately reflect true population. However, the president of the Voorhees mosque estimated that approximately 15 families, or about 30 adults were affiliated with his community at that time.

Zia Rahman, then president of the Voorhees Muslim American Association, immigrated to the US from Pakistan in 1973 and came to Voorhees in 1979. He recalled that when he arrived the Muslim community was very small and without formal organization. Muslims encountered each other in business interactions and in social and civic engagements, and created an informal

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<sup>155</sup> Information in this section is drawn from the author's interview with Zia Rahman, President of the Muslim American Community Association, 11/14/2007.

community. Into the 1980s, as the numbers of Muslims grew, the community prayed in whatever spaces they could find, commonly in each other's homes. Mr. Rahman described these gatherings as casual and not regular. However, the desire to forge a united spiritual purpose in a formalized community gained momentum; the need to establish a proper prayer hall became clear. A "volunteers committee" was organized with the purpose of identifying suitable, affordable real estate. Mr. Rahman, with strong managerial experience and a tenacious commitment to the mission, emerged as its *de facto* leader.

The Voorhees site was not the first location the community considered or occupied. Between 1985 and 1993 they attempted to acquire parcels in the two neighboring townships. Having signed purchase contracts that were contingent upon municipal approvals, the committee undertook preliminary review processes for use variances. Mr. Rahman reports having been told by the townships' zoning review boards that mosques would not be approved for the sites, and recalls having had the impression that the reasons for the denial were overtly exclusionary. The committee had legal counsel, but Mr. Rahman felt that he and his colleagues were not fully apprised of their constitutional rights regarding free practice, and therefore did not respond as firmly as they might have done had they been better informed. He suggested that the lawyer had a defeatist attitude about challenging "city hall."

In 1993, Mr. Rahman and his steering committee located a vacant structure, built as a Roman Catholic church and later used as a community center, in Palmyra, New Jersey, fourteen miles from Voorhees. In that location a redevelopment proposal was successful. The Palmyra site is on the border of a lower-middle/middle class residential neighborhood and the town's small commercial downtown. A professional planner interviewed for this study recalls that the proposal

to site the mosque in Palmyra was initially well-received and generated little controversy.<sup>156</sup> It seems likely that the space's previous religious and public use and its transitional location contributed to the ease with which the Muslim community's proposal was accepted. Additionally, the zone in which the site was located did not require a special use variance for religious uses, so the review was limited to site plan and was conducted by the planning board. Opponents were few and far less vociferous than those the community would face in Voorhees.<sup>157</sup>

Mr. Rahman and some members of the Voorhees Muslim community would later separate from the Palmyra mosque. The division seems to stem from two motivations, one relating to leadership disagreements and another from a desire to establish a prayer hall yet closer to Muslims living in Voorhees. A more accessible location would allow the faithful to attend prayers more frequently. Along with another Palmyra board member, Mr. Rahman established a separate 501(c)(3) organization called the Muslim American Community Association (MACA) in 2002; they began seeking development sites near the homes of other Muslims drawn by the vision of a neighborhood mosque.

#### **PART IV: MOSQUE SITE AND NEIGHBORHOOD DESCRIPTION**

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The three parcels that would be acquired by the Muslim community at the corner of Lafayette Avenue and Haddonfield-Berlin Road (Camden County Route 561) were commonly thought of

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<sup>156</sup> Augustyn interview, 01/23/2008.

<sup>157</sup> Rahman, 11/14/2007. *Op. cit.*





Map 4.3 Approximate boundaries of the combined development lots acquired by the Voorhees Muslim community in 2003. The approximate footprint of the brick Gothic Revival house is shown on the left, and the approximate footprint of the modified bungalow is shown on the right.

as blighted (see Map 4.3).<sup>158</sup> The first, block 277, lot 5, fronting Rt. 561, contained a once-stately, abandoned wood-frame, brick-clad Gothic Revival residence. It appears to have been



*Figure 4.1 Abandoned brick Gothic Revival house extant on Block 277, Lot 5 at the time of site acquisition. Held in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.*

the last vestige of 19<sup>th</sup>-century farmsteads in the area, surrounded by commercial and institutional uses along busy Haddonfield-Berlin Road. Fronting Lafayette in block 277, lot 4 was a much-modified Arts & Crafts bungalow converted to commercial use probably in the 1950s or 1960s. Its last occupant used a large, flat-roofed addition to the structure's west<sup>159</sup> as storage for hospital beds. The exact year of its abandonment was not determined, but references made

<sup>158</sup> Information in this paragraph drawn from the following sources:

"Survey of Premises, Block 277 Lots 5&4, Township of Voorhees, County of Camden, NJ," prepared by Richard M. Sapio, dated 01/09/2003. Held in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

Existing conditions photographs located in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

Use Permit & Certificate of Occupancy issued to "Lafayette Office Center" in 1985 for Block 277, Lot 4. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

1990 drainage easement for Block 277, Lots 3 & 4. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

<sup>159</sup> The directions referenced in this and all site descriptions throughout the chapter are not cardinal directions. For ease of reference and flow of text, I have repeated the directions used in the written and recorded file materials, which are rotated off true north.



throughout the mosque approvals process suggest that the property was vacant and derelict between fourteen and eighteen years. The third parcel, block 278, lot 1, constituted the north-bound lane of the vacated “paper street” where First Street was originally platted to extend across Lafayette. In 1990, a drainage easement was extended along the east boundary of block 277, lot 4 (the never-built south-bound lane of First Street).



*Figure 4.2 Abandoned, much-modified bungalow extant on Block 277, Lot 4 at the time of site acquisition. Held in the file “Muslim American Community Association,” Voorhees Township Planning Department, reviewed June 2006.*

“Area” or “district” are perhaps better terms than “neighborhood” to describe the parcels surrounding the mosque. In 2003, Haddonfield-Berlin Road hosted a variety of commercial uses, some in purpose-built, small plazas, others in converted, early 20<sup>th</sup>-century residential structures. Directly across from the mosque site at the southwest corner of Lafayette and Route 561 several commercial structures housed offices and small businesses. A sizable auto repair and detailing center commanded the northeast corner. My observations of the broader Township suggest that the intensity of commercial uses along the route 561 corridor was and is lower than many other commercial districts. It is, as one resident observed, a last frontier in the



township where national chains have not built massive retail outlets surrounded by expansive parking lots.<sup>160</sup>



*Figure 4.3 Commercial uses at northwest corner of Lafayette Avenue and Haddonfield-Berlin Road (CR 561); across from mosque development site. Photo KE Foley.*

With two exceptions, Lafayette Avenue is entirely single-family residential. The diminutive homes nearest the mosque site date to the 1970s; moving eastward along the avenue are examples of the large lot, large structure speculative development that typifies the 80s and 90s housing boom in Voorhees.

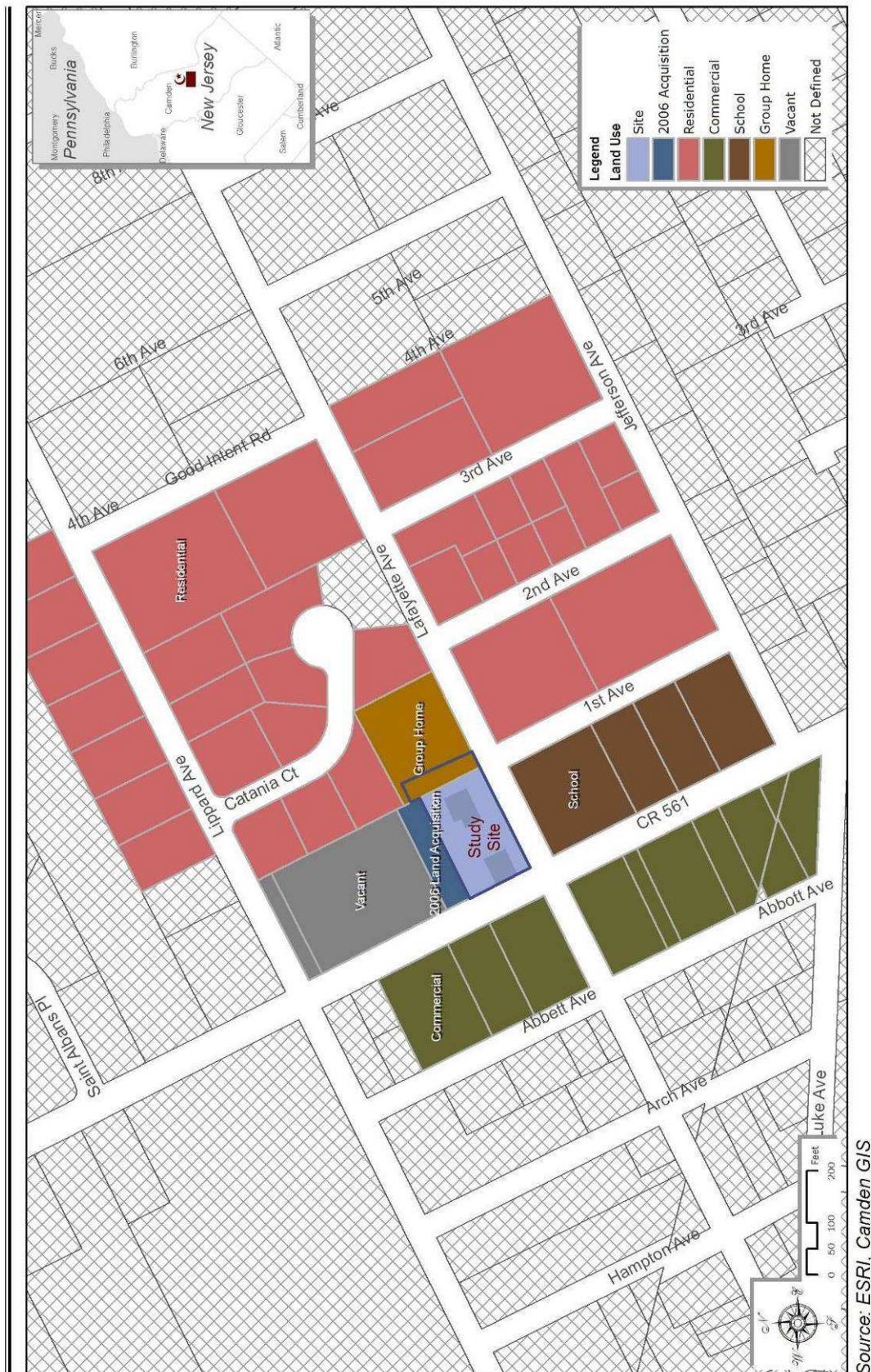


*Figure 4.4 Older homes along 1<sup>st</sup> Avenue between Lafayette & Jefferson Avenues, Voorhees. Photo KE Foley.*

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<sup>160</sup> Madelyn Quattrone, resident of 108 Lippard Avenue. Interview by the author, 11/03/2007.





Source: ESRI, Camden GIS

Map 4.4 Map of uses surrounding MACA development site at the time of property's purchase by the Voorhees Muslim community, 2003.

Directly across Lafayette was a private K-8 school and its accompanying play yard and parking lot.<sup>161</sup> Then, directly to the east of the mosque a group residence for adults with mental disabilities occupies one of the small houses. Looking northward, the parcel that abuts the mosque site contains a 1920s residential structure and its garage. The house, apparently, was converted to mixed use at some point and contained a private business in addition to a



*Figure 4.5 The Chesterbrook Academy and its parking lot, at southeast corner of Lafayette Avenue and Haddonfield-Berlin Road (CR 561), across from the mosque development site. Photo KE Foley.*

residence. The lot north of this house was and is vacant, and extends to Lippard Avenue. From Lippard Avenue, one accesses Catania Court and the homes that back onto the rear portion of the mosque site. Catania Court cuts deep into the block between Lippard and Lafayette, curving into a cul-de-sac. The homes along this street were developed in the 1980s, and, compared to

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<sup>161</sup> The Chesterbrook Academy received a use variance to operate in a commercial zone in 1999. It opened in August 2001 and relocated to another part of the township in early 2007. The author did not interview school representatives for this research and it is therefore not known whether the mosque's opening had an influence on their decision to relocate. Source: Elaine Adamson, Assistant Zoning Officer, email to the author, 01/31/2008.



other housing in Voorhees, are mid-sized and on mid-sized lots with thirty-feet front setbacks and fifteen-feet side setbacks.



*Figure 4.6 Homes typical of 1980s and 1990s development on Lippard Avenue, Catania Court and other streets near the mosque development site. Photo KE Foley.*

## **PART V: THE MOSQUE PROPOSAL AS INITIALLY ENVISIONED**

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In December 2002, mosque president Zia Rahman first approached Voorhees township officials regarding the lots at Lafayette Avenue and Route 561. He and his colleagues envisioned a development program in keeping with what they had carried out in Palmyra—the reconstituting of existing structures to serve as prayer hall and community space. The brick Gothic at the corner would be used as an administrative office for the mosque, along with classroom and library space for adult Qur'an study and children's religious instruction. The Lafayette Avenue commercial property would be rehabilitated to serve as the actual prayer hall. Before finalizing purchase agreements with the seller, Mr. Rahman met with inspectors from the Township building department to determine their opinion of the feasibility of rehabilitating the structures.

The inspectors concluded that rehabilitation possibilities were likely, pending grants of zoning and construction permits.<sup>162</sup>

The facilities would accommodate approximately 15 Voorhees Muslim families, consisting of between 45 and 60 individuals.<sup>163</sup> In February 2003, Mr. Rahman applied for two concurrent municipal reviews: a use variance and a minor site plan review.<sup>164</sup> The latter is contingent upon the former, but in New Jersey a developer can opt to apply for both reviews at once, and many do, deeming it more cost-effective for their consulting professionals to appear in one hearing rather than in two or several.<sup>165</sup>

The Muslim community's application was complicated by the fact that the parcels they were attempting to consolidate for the development were not in the same zone.<sup>166</sup> The lots containing the structures (block 277, lots 4 and 5) were zoned Business (B) and in that zone religious land uses were permitted only with use variances. The eastern parcel, however (block 278, lot 1), was within the Medium Residential Zone, and, although religious uses were allowed in that zone as of right, the parking that would be affiliated with the mosque was not and required a use variance.<sup>167</sup> A variety of other minor variances would be required to address extant conditions

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<sup>162</sup> Letter from Zia Rahman to Steve Murray and Charles Bogardus, inspectors with the Voorhees Township Building Department, dated 12/17/2002. Found in the department's block files, reviewed June 2006.

<sup>163</sup> Statements of William F. Hyland, Attorney for the Voorhees Muslim American Community Association and Zia Rahman, President of MACA. Recording of the 04/03/003 meeting of the Voorhees Township, New Jersey Zoning Board of Adjustment; transcription made by the author.

<sup>164</sup> February 2003 development review application submitted by MACA. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

<sup>165</sup> William M. Cox. *New Jersey Zoning and Land Use Administration, 2003 Edition*. Newark: Gann, 2003, section 14-2, pages 321-323. Several professionals associated with the mosque application reported that the applicants who feel that they cannot afford to pay architects, engineers and lawyers to attend multiple hearings often choose to proceed with a single use and site plan application. The result can be a compressed, confused proceeding with review board members being asked to address differing concerns and multiple layers of detail. Interviews with author: Kevin Becica, consulting ZBA engineer, 11/01/2007 and Tim Miller, consulting planner to the applicant, 11/01/2007.

<sup>166</sup> Kevin Becica. Letter of application review addressed to the chair of the Voorhees Zoning Board of Appeals, dated 03/28/2003 and prepared by consulting ZBA engineer Becica of Environmental Resolutions, Inc. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

<sup>167</sup> Kevin Becica. Letter of application review addressed to the chair of the Voorhees Zoning Board of Appeals, dated 05/01/2003 and prepared by consulting ZBA engineer Becica of Environmental Resolutions, Inc. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

that did not conform to the zoning code in force at the time, including setbacks.<sup>168</sup> Until the use variance and conditions variances were granted, MACA signed a contract of sale with the single seller of the lots contingent upon a successful use variance application to the Township.<sup>169</sup>

Under New Jersey's statutory Municipal Land Use Law, the rehabilitation of existing structures for a new use qualifies for minor site plan review; minor site plan review requires less detailed documentation than major site plan review. And, whereas in some states site plan review is shifted to the planning board, that same New Jersey statute requires that both use and site plan reviews are conducted by the same adjudicating body, in this case the ZBA.<sup>170</sup> As such, the entire review process for the mosque was conducted by the Zoning Board of Adjustment.

Following normal procedure, the application was accepted by Voorhees Township zoning staff, who forwarded it to the ZBA's consulting engineer, Ms. Kevin Becica. She reviewed the application, relevant land use codes, and existing site conditions and wrote a report in the form of a letter to the chairman, Jeff Bush.<sup>171</sup> As was typical of established protocols, the letter included a description of the proposal, supporting materials submitted by the applicant, a listing of variances necessary to comply with zoning and other land use codes, and recommendations for lines of questioning that the board might pursue. The chair and the board received the packet several days prior to the visit, and, as was typical, no advance meetings to discuss the application or potential conflicts surrounding it were held. As with all applications, the first exchange that members had with staff and consulting professionals took place in the thirty

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<sup>168</sup> Becica, 03/28/2003, *ibid*. Also interview by author of staff to the zoning board (Jones and Adamson, 10/25/2006).

<sup>169</sup> MACA is named as the "equitable owner [of the lots] under agreement to purchase" in its development review application.

<sup>170</sup> "[The ZBA may] require the applicant to submit at least a minimal site plan to show the board what the proposed use will consist of and the general location of buildings, parking areas and the like." Cox, *ibid*, page 323.

<sup>171</sup> Becica, 03/28/03, *ibid*.

minute caucus session held prior to the bi-weekly public meeting of the ZBA.<sup>172</sup> Mr. Bush noted that he always made an attempt to visit all proposal sites on the agenda, but as a volunteer with a career and family, it was rare that he could visit them all as well as thoroughly review supporting materials every fortnight. Regular members, he felt, rarely or never made site visits.

Anticipating challenge from the public, mosque president Zia Rahman hired renowned New Jersey land use attorney William F. Hyland, Jr., of the firm Ballard Spahr Andrew & Ingersoll, LLP. Through the firm's *pro bono* program for non-profits, Mr. Hyland's considerable hours would be donated to the Muslim community. Rahman and Hyland assembled a team of professionals who testified from the perspective of their expertise: Jim Miller, a consulting planner and Jack Gravelin, a civil engineer. These gentlemen also would decide to work *pro bono*. The architect, Keith Haberern, had a working relationship with Mr. Rahman's brother and was selected for the project despite his lack of experience with designing mosques. Mr. Rahman felt that this didn't matter; he could teach an architect the space requirements for a prayer hall and community space.<sup>173</sup>

The time and cost savings that Mr. Rahman and Mr. Hyland had hoped to achieve by applying for a single review for a use variance and minor site plan were lost to an extended process carried out in five hearings over an eighteen month period. The sources of the complexity are myriad, and will be addressed after a summary of the sessions and their outcomes.

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<sup>172</sup> Interview by the author: Elaine Adamson and Agnes Jones, staff to the ZBA, 10/25/2006; Jeff Bush, former chair of the ZBA, 9/20/2007; Becica, 11/01/2007.

<sup>173</sup> Rahman interview 11/27/2007.

Following testimony from Mr. Rahman regarding general use patterns, congregation demographics, and preliminary architectural design, his consulting planner analyzed project impacts and mitigating factors. This is a key element of New Jersey's Municipal Land Use Law (MLUL) relating to use variances. The MLUL authorizes local zoning boards to grant use variances when:

- (1) "special reasons" exist for the variance (the positive criteria); and
- (2) the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purposes of the zone plan and zoning ordinance (the negative criteria). N.J.S.A. 40:55d 70(d).<sup>175</sup>

Under the MLUL, the zoning board must weigh the detriments of a project against its benefits, understand its overall impacts on the neighborhood, zoning plan and zoning ordinance and determine whether any ameliorating conditions can reduce those impacts. Houses of worship, however, fall within a class of uses that are considered inherently beneficial and the positive and negative criteria are less stringent. That is, for an inherently beneficial use, the positive criteria are presumed to be met. The balancing standard for inherently beneficial uses is known as the *Sica* Test, named for a New Jersey Supreme Court case (*Sica v. Wall Board of Adjustment*, 127 NJ 152 (1992)).<sup>176</sup> The inherent benefits of the mosque under *Sica* would form an important basis for considerations of its use variance; in particular its potential modifications of the

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<sup>174</sup> Unless otherwise cited, information in this section is drawn from the author's transcription of audiotapes of the 3 April 2003 public hearing.

<sup>175</sup> Christopher DeGrazia, Esq., "Understanding Inherently Beneficial Uses." Published on the blog New Jersey Zoning and Land Use Law, 6/17/2009. Accessed 9/4/2011 at <http://www.njlandlaw.com/archives/280>. Information in this section also drawn from my follow up telephone discussion with consulting planner Jim Miller, 8/1/2011 and email 9/5/2011.

<sup>176</sup> According to DeGrazia, in the years following *Sica*, local zoning boards began to focus on determining whether a use qualified as inherently beneficial and did not sufficiently weigh its overall impacts on the local zone plan. To rectify the imbalance, the New Jersey Legislature amended the Municipal Land Use Law in 1997 to emphasize that even inherently beneficial uses must address the negative criteria *and* demonstrate that the public benefit of projects outweighs any detriments to the neighborhood, zoning plan or zoning ordinance. N.J.S.A. 40:55d 70(d). The authority and legal standard applicable for a local zoning board to deny a requested use variance after detrimental effects of an inherently beneficial use are demonstrated was established in 2000 in *The Stop & Shop Supermarket Company v. The Board of Adjustment of the Township of Springfield* (A-92-98).



business character along Haddonfield-Berlin Road and the residential character of the adjoining residential zone. These same discussions would shape the arguments against its approval.

Following the discussion on inherent benefit, the project engineer presented the general site plan, including parking, along with concept designs for the primary elevation of the prayer hall building only. No plans were presented for the brick structure the applicant intended to use as an office. The session was well-attended; witnesses describe the hearing room as having been nearly filled with members of the public. Township staff reported that the attendance was higher than for typical applications, including religious properties, but not more than for other controversial applications, such as proposed gas stations and Walmarts. However, negative public reaction was considered comparable to or more dramatic than that of such proposals. Thirteen members of the public spoke during the comment period; all were opposed to the mosque.



*Figure 4.7 Concept drawing of the mosque design presented in the 4/3/2003 Use Variance and Minor Site Plan Review. Keith Haberern, AIA, Architect.*

Lines of questioning by ZBA board members, as well as comments by the public, centered around: (1) the demographics of the Voorhees Muslim community and number of people who would attend the mosque when it opened and in future; (2) the establishment of capacity for the structure and the related calculation of required parking; (3) existing traffic conditions and the potential impact of mosque-generated traffic; and (4) the size of the development site versus the magnitude of the proposed use. Although general neighborhood “safety” was an underlying theme of much public comment, only one speaker overtly referred to concerns over terrorism and the three-week old war in Iraq. Sadly, he was the first person to speak and was highly animated; he resorted to podium-pounding, threatening ZBA members and exchanging personal attacks with the ZBA attorney. Worse, he was unchecked by either the board chair or the attorney and was allowed to spew irrationalities for an extended period of time. His tirade was memorable and set a combative tone that contributed to the perception that opponents were of a single, bigoted, fear-based position.

The concerns raised by board members and the public led the applicant’s attorney to request that the ZBA table their vote pending the submission of additional testimony related to occupancy, use patterns and traffic/parking issues.

**PART VII:**  
**HEARING #2: 8 MAY 2003, USE VARIANCE SOUGHT**

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In advance of the next hearing, the Muslim community’s attorney, Mr. Hyland, sent a letter to Kathleen Friel, the attorney to the ZBA,<sup>177</sup> summarizing the legal issues and cases relevant to the mosque review. Most importantly, he cited case law that established religious uses as

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<sup>177</sup> Letter from William H. Hyland to Kathleen D. Friel, dated 05/05/2003. Found in the file “Muslim American Community Association,” Voorhees Township Planning Department, reviewed June 2006.

inherently beneficial and presumptively meeting the positive criteria in use variance reviews.<sup>178</sup>

He further cited the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000,<sup>179</sup> which prohibits government entities from applying land use regulations in any way that imposes a substantial burden on the exercise of religion. Hyland also reminded the board that while they could consider the testimony he would present from a traffic engineer in weighing the use variance, they could not deny that variance solely because of off-site conditions, particularly if conditions in the approval would mitigate the impact of those conditions.<sup>180</sup> Finally, he left no question as to the role that unrelated public comment should play in the board's consideration of the application:

I also believe it necessary to address two other issues which were the subject of repeated comment at the previous hearing. The first issue deals with concerns regarding "personal security" which I believe were raised in light of the fact that the applicants here are Muslim, and at the time, the comments were, no doubt, influenced by the fact that a war with Iraq had just commenced. The second issue relates to testimony by various residents as to what amounted to an exponential growth forecast for this facility which will purportedly cause significant traffic and parking problems. Consideration of such speculative and unsupported lay opinions is clearly inappropriate. See, *Exxon Company USA vs. Board of Adjustment of Borough of Bernardsville*, 196 N.J. Super, 183 (Law Dev. 1984). The Board's conclusions must be based on substantial credible evidence and may not be based simply on testimony that speculates on mere possibility. A Board acts improperly where it rejects expert testimony and relies on lay testimony of objecting residents and speculates or relies upon the unsubstantiated fears of nearby residents as to what "may occur." *New Brunswick Cellular Telephone Company vs. Zoning Board of Adjustment of Metuchen*, 307 N.J. Super 560 (Law Div. 1997).<sup>181</sup>

Former ZBA members interviewed for this article did not recall ever having been briefed about this letter by Attorney Friel, nor did they recall any more than a cursory review of the state case law that should have guided their decision making.<sup>182</sup> During deliberations in the second use

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<sup>178</sup> *Kali Bari Temple vs. Board of Adjustment* 271 NJ Super 241 (App. Div. 1994) and *Smart SMR vs. Fairlawn Board of Adjustment* 152 NJ 309 (1998).

<sup>179</sup> 42 U.S.C. §2000cc

<sup>180</sup> *PRB Enterprises, Inc. vs. South Brunswick Planning Board* 105 N.J. 1 (1987) and *Scholastic Bus Co., Inc. vs. Zoning Board of Borough of Fairlawn* 326 N.J. Super 49 (App. Div. 1999).

<sup>181</sup> Hyland letter, *op. cit.*

<sup>182</sup> Author interviews with former chair Jeff Bush and former member Carmen Console, 09/20/2007 and former member Todd Weber, 09/21/2007.

hearing, two members referenced the free exercise clause of the Constitution,<sup>183</sup> and one, Todd Weber, directly referenced RLUIPA's influence on his vote in favor of the use variance. In a research interview, Mr. Weber reported that he was aware of RLUIPA from his own internet research and not from the advice of the board solicitor.<sup>184</sup> Member initiative made up for some of the striking lack of township legal guidance, and contributed to a positive result for the use variance application. Certainly, though, the township's weakness greatly influenced the tenor and outcome of successive hearings.

The applicant's testimony given during the May 8<sup>th</sup> hearing related directly to the three open questions from the first session: (1) demographics and use patterns gathered from other regional mosques; (2) a formal calculation of occupancy, intended to assist in the establishment of necessary parking; and (3) a traffic analysis. It became clear to Mr. Hyland that parallel reviews for a use variance and site plan were too complex and controversial, and so he withdrew the site plan application. He further requested that the granting of a use variance be conditional pending a successful site plan review. However, his decision to focus solely on the use variance was not mentioned until after testimony relating to both aspects was completed, nearly two-and-a-half hours into the hearing. By that time, use and site issues had become intermingled in the minds of board members and the public, and a considerable degree of confusion over what should be considered infused discussions. The public repeatedly brought up site plan issues such as parking design, and kitchen and garbage services; they were told by the chair that such comments would not be considered. When speaking, neighbors seemed to have had difficulty understanding why they were not allowed to discuss issues of site plan when the majority of the applicant's testimony related to it rather than use:

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<sup>183</sup> Summary comments of Francis Sirch and Jeff Senges, ZBA members, 5/8/03 hearing. Transcription made by the author.

<sup>184</sup> Weber interview 09/21/2007.

ACCARDO: . . .I'll ask the board, I'm sure you're going to assist me here. Use versus site, you know, I'm having trouble separating the two, so, help me with what I can talk about up here. I can tell you though it seems like we talk a lot about [site].

CHAIR: Use would be strictly the ability to use the site as a house of worship, whether it be Jewish, Catholic, Muslim, whatever it may be, on the site.

ACCARDO: Okay. Did we tonight the majority of our conversations were driven around site even though the board is not voting on that tonight.

CHAIR: It's always one of those things where you can't really talk about one without talking about the other, we always have to come back a little bit.

ACCARDO: And I understand. It's kind of ironic that you're saying that to me, but you'll shut me down as I talk about site so I'll try to stay on use.<sup>185</sup>

In the first hearing, the opposition consisted of a pool of residents drawn from a comparatively large radius around the development site, and included those from other subdivisions. Despite another reportedly large audience, only five individuals spoke in the second hearing, and they all lived either across the street from the mosque or on an adjacent street and cul-de-sac. All but one of these individuals spoke in the first session as well. Several of them expressed their concern that the use would not be compatible with the intentions of the recently-updated township master plan, but most comments focused on site plan issues, including: (1) the perception that the site was too small to accommodate the intensity of the use; (2) the detriment mosque-generated traffic would have on existing traffic loads; and (3) overflow parking problems caused by a number of spaces they deemed to be insufficient. The large audience periodically commented audibly during deliberations and on several occasions shouted out. The overall level of drama, however, was reduced as compared to the first session. A rational—though no less passionate—tone replaced the shouting and table thumping that had characterized the first session. No one mentioned fears about safety or terrorism; no one stood

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<sup>185</sup> Comments by Vincent Accardo, Transcript of the 5/8/2003 hearing before the ZBA. Transcription made by the author.

in unqualified opposition to a religious use on the site. Two members of the public spoke in favor—one was a Muslim and the other a recognized advocate for local diversity issues.

The ZBA membership voted unanimously in favor of the use variance, though several expressed their concern that the proposal would not be able to pass the site plan review on which it was contingent. Two made reference to public comments; one of them implied safety concerns specific to mosques:

I'm having some difficulty reaching a decision this evening. My concerns are more on the periphery of what's been discussed this evening. And it takes me back to earlier testimony that was given [in the first hearing] that was given from one of the residents concerned about safety, or from a couple of residents concerned about safety for their families, themselves, their children, grandchildren. And being in close proximity to this potential mosque site. I would agree that it is an inherently beneficial use. However, I'm sure the folks in Harrisburg, Pennsylvania in 1979 thought that Three Mile Island was an inherently beneficial use to them. . .<sup>186</sup>

Any such hesitation was overridden by the impassioned comments by several members who cited constitutional protections for free practice, including:

If I were to not vote in favor of this motion, I would be in violation of everything that I've always taught my children and always believed in. I think that freedom of religion is probably our dearest freedom. One which throughout the world people have been persecuted for throughout the ages and I think everybody here would agree that it's a crime. I have some serious concerns about the site plan itself. About the feasibility, about the [ten] pounds of candy in a [five pound bag]. . .those will be addressed in detail and with diligence I'm sure by both the applicant and this board when the time comes, but I do see that this is inherently beneficial, and I vote in favor of the motion.<sup>187</sup>

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<sup>186</sup> Comments of Arnold Wallace, concluding statements of ZBA hearing 05/08/2003. Transcription made by author.

<sup>187</sup> Comments of Jeff Senges, concluding statements of ZBA hearing 05/08/2003. Transcription made by author.

With the conditional approval of the use variance, Mr. Rahman proceeded to work with his architect, Keith Haberern, for the design of the office and prayer hall. Haberern determined that the brick house was in fact in much poorer condition than originally suspected and its rehabilitation as an office would be cost-prohibitive. The Muslim community's efforts then focused on a more extensive rehabilitation of the second building to accommodate all required uses in one facility. The site plan application that Rahman would present, therefore, was radically different than that originally submitted to the ZBA and the public.

While the Muslim community was fine-tuning its site plan, the opposition was preparing its response and attempting to organize supporters. At the end of August, 2003 an anonymous flyer was left at homes, some almost four miles from the site.<sup>188</sup> In the flyer, four claims were made against the proposal, based on incorrect and distorted information: (1) the initial occupancy of the mosque would be approximately 200, and, because few mosques existed in the area, the Voorhees mosque would attract “hundreds” more Muslims from the region and “100 or more” cars, for prayers “5 times a day, 7 days a week;” (2) there would be no vetting of members, allowing “extremists and radicals” with “connections to terrorists” to pray alongside moderate members; (3) that the Muslim community was asking for an unreasonable number of variances from existing code requirements, and (4) that, because religious institutions are tax-exempt, the use of the mosque would be at taxpayers’ expense. Finally, the flyer urged attendance at the site plan review or personal contact with the members of the ZBA.<sup>189</sup> No one has claimed responsibility for the flyer, but on- and off-record comments made by neighbors as

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<sup>188</sup> A letter in response to the flyer, sent to the planning staff and repudiating both its claims and its anonymous sender, was received from an address approximately 3.25 miles from the site. Letter from Soong T. Chiang, dated 09/30/2003. Found in the file “Muslim American Community Association,” Voorhees Township Planning Department, reviewed June 2006.

<sup>189</sup> “A Mosque is not a Must for Voorhees Township!,” anonymous flyer dated 08/20/2003. Found in the file “Muslim American Community Association,” Voorhees Township Planning Department, reviewed June 2006.

part of research interviews suggest that it originated with a group of residents living close to the site. Repetition of these assertions in public comment also support this assumption. Regardless, the flyer was effective. Approximately 120 people attended the first site plan review hearing, as well as members of the print and broadcast media.<sup>190</sup>

**PART IX:**

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**HEARING #3: PRELIMINARY AND FINAL MAJOR SITE PLAN REVIEW, 4 SEPTEMBER 2003**

The audiotapes of the site plan review hearings were inadvertently destroyed by township staff as part of a file purge. The only remaining evidence of the hearings' conduct are the minutes,<sup>191</sup> which lack detail and seem to contain errors. Statements contained in the minutes were referenced in research interviews, but some accounts conflict. As such, analysis of these hearings is necessarily less detailed than was offered for the use variance review.

The need to demolish the brick structure on the site, by statutory guidelines, caused the site plan review to be reclassified from minor to major. In principle, this reclassification called for more extensive documentation than was originally required. However, the site plan and architectural drawings continued to be limited in scope and preliminary in nature, and this proved challenging for board adjudication and public understanding. The three main topics of the hearing were occupancy and the related parking calculation, traffic impacts, and buffering for adjacent residential properties. The greatest source of tension surrounded the determination of occupancy. In the use variance hearings occupancy was presented in terms of numbers of people affiliated with the mosque, which Mr. Rahman testified to be 15 families; as part of the site plan review, the applicant instead calculated occupancy based on using available floor

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<sup>190</sup> Edward Colimore, "Mosque Proposal Debated at Voorhees Zoning Session," *Philadelphia Inquirer*, 09/05/2003.

<sup>191</sup> Minutes, Voorhees Township Zoning Meeting, 09/04/2003. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.



space in the proposed prayer hall. Based on the applicant's assertion that 12 square feet is needed per person to perform the physical motions of the Islamic prayer ritual, the architect calculated that 90 individuals could occupy the prayer hall. From this number, he applied the zoning code requirement for parking associated with houses of worship: one parking space per three seats in a pew. Although the mosque would not have pews, the applicant made the argument that such a calculation could and should be considered comparable for a mosque, and proposed 30 spaces to meet peak occupancy of the structure. Throughout the applicant's testimony, audience members shouted out demands for clarification, as well as attempts to correct or contextualize statements made by the applicant and his consulting professionals.

The occupancy testimony, along with the traffic and site plan engineering presentations, consumed nearly two hours of testimony; it was nearly 11:00pm when the chair called for brief recess before opening the public portion of the hearing. When he announced his intentions, a member of the public asked to speak out of turn and was declined. He spoke anyway, demanding the hearing be tabled so the public could speak when everyone was feeling more fresh and open to comments. During the recess, the mosque's attorney consulted with the chair and the ZBA's attorney, and agreed to continue the hearing in two months. The time, he argued, would give the applicant an opportunity to address issues raised by the board, and also meet the requests of the public. However, the discussion did not end there.

In New Jersey, the end of public hearings is reserved for open public comment, in which individuals may address any topic they deem of interest to the adjudicating body, regardless of whether it had been on the meeting agenda. Eight citizens came forward to discuss the concerns about the mosque proposal; several questioned the credibility of the applicant's statements. No speaker is identified in the record; all are listed as "someone from the public." Mr. Rahman and his attorney had left the hearing room and therefore did not witness the

comments. The attorney for the ZBA allowed them anyway; it was finally the ZBA's consulting engineer who called for a stop:

Kevin Becica stated that this should be an open session—we are not taking these residents [sic] names, the applicant is not here to hear this testimony—she stated that she understood the residents want a public session but we need to continue this to a public hearing when the applicant is present; this cannot be going on right now.<sup>192</sup>

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**PART X:**  
**ORGANIZING TO OPPOSE AND SUPPORT**

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### ***Strategizing Among Neighbors***

Transcriptions of the mosque review hearings reveals patterns and repetition in public comments that suggest an effort to organize a consistent message from neighbors focused around insufficient site size, building occupancy, traffic, parking and loss of a taxable parcel. As part of this research, opposing neighbors were asked if they were part of or were aware of any efforts to organize around common themes. Although most were unwilling to divulge participation in advance planning sessions, two did reveal that organizing sessions had taken place. There is no question that some neighbors did have legitimate land use concerns, which will be analyzed later in the chapter. However, the two interviewees stated plainly that the organized group recognized the problem of raising issues of bias directly in public hearings:<sup>193</sup>

N. PASCHT: I think the people that brought that up were the people in [that] very close development. . .right behind the mosque.

E. PASCHT: They were more organized. . .and then we went over there to meet with them. . .

FOLEY: Do you think that people had other concerns, maybe based on 9/11, concerns about terrorism that they were afraid to say in hearings?

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<sup>192</sup> Minutes of the Voorhees Township Zoning Meeting, 09/04/2003. Page 9.

<sup>193</sup> Edward and Nora Pascht, interview by the author, 11/02/2007.

N. PASCHT: Yes, I think so.

E. PASCHT: Oh, I think so, that's the majority, the majority of the group were afraid of religious radicals. When we went to the meeting over in their house, that's what they were concerned [about]. They wanted to get rid of the church [sic] period. And they were looking for a way to do it. And traffic and parking were legitimate concerns that were in the code. . .that they could use. So they were just using [the code] as a tool like everyone else, but anyway.

These interviewees could not clearly remember when this group began organizing, but the consistent statements given during the site plan review suggest that it met at least in preparation for the site plan review process.

### ***Building an Interfaith Coalition***

At the same time that an opposition group was organizing, a supporting group formed. The confrontational nature of the use variance hearings and the first site plan review inspired the founding of an inter-faith alliance. Community member Lori Volpe, an experienced community organizer and activist, read about the contentious initial use variance hearing in the local paper.<sup>194</sup> She attended the first site plan hearing and made a powerful statement of support for the Muslim community and religious freedom generally. In an interview, she contrasted the mosque development, its impact and public response to it with large-scale retail and residential developments. By comparison, she felt that the greater impacts of such developments were given less public and ZBA scrutiny and that the Muslim community was both being held to a higher standard and being asked to provide evidence far beyond what was normally expected of an application of its size. She felt that the presence of a vocal, angry public, as well as journalists, influenced board members' choice to follow lines of questioning not typical for religious properties. For example, she felt that the focus on the details of the Islamic prayer ritual (such as how much space is required for the prostration of each participant) would not have been given to the ritual of a Christian or Jewish denomination.

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<sup>194</sup> Information in this section drawn from the author's interview with Lori Volpe, 11/01/2007.

When she and her neighbor, who live two miles from the development site, received the anonymous flyer in their mailboxes, they were outraged. Ms. Volpe knew from her previous community activism that her lone voice would not be sufficient to alter the character or outcome of hearings. She and her neighbor, a Buddhist and a Quaker respectively, reached out to their religious networks and formed The Coalition for a Multi-Faith Democracy. The group organized the writing of letters to the editor from recognized leaders of the Roman Catholic, Unitarian and Jewish communities, among others; similar letters to the ZBA; and a post-card campaign that delivered nearly 600 individual statements of support to the Township offices. The letters and cards emphasized the need for the ZBA to hold the Muslim community to consistent standards of review.<sup>195</sup> The Coalition received the backing of the Anti-Defamation League and the California-based Interfaith Freedom Foundation.<sup>196</sup>

The coalition's goals, according to Ms. Volpe, were to show a swell of support that would counter what she perceived to be the intimidation of the ZBA by opposition parties; to steer deliberations away from inappropriate lines of questioning; and to encourage board members to approve the application despite the opposition.<sup>197</sup> Although some ZBA members and neighbors resented the involvement of the Coalition and felt that its presence focused attention too much on religious freedom instead of planning issues,<sup>198</sup> others welcomed its voice, as Chair Jeff Bush commented:

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<sup>195</sup> Many of the letters found in the public file followed a standard format: "To the Voorhees Zoning Board: I urge the board to follow standard procedures, rather than require the Muslim-American Community to adhere to higher standards. I support the right of our Muslim-American brothers and sisters to worship in their own way in their own community. I stand with this small group of devout and peaceful practitioners, trying to establish their religious home." The pre-printed postcards read: "To the Voorhees Township Zoning Board Members: We support the efforts of the Islamic community of South Jersey as it establishes a religious home in Voorhees Township."

<sup>196</sup> Edward Colimore. "Support for Disputed Voorhees Mosque Grows." *The Philadelphia Inquirer*, 10/14/2003, page B1.

<sup>197</sup> After the mosque received its site plan approval, Ms. Volpe's home was vandalized with spray-painted vulgarities and other damage. Of the attack she said: ". . . it's not a, it's not an easy thing to stand up for the Muslim community, especially at that time, right. . . at the beginning of the invasion [of Iraq]." Interview with author, 11/01/2007.

<sup>198</sup> During the public comment period, member Jeff Senges stated that he resented the implication that the board was motivated by bias and the portrayal of the township by the press and the Coalition. Minutes of the Voorhees Township ZBA meeting, 11/06/2003.

I was grateful for their participation because I really felt that they added a voice to the dialogue that needed to be added. That was not necessarily the voice that the . . . Zoning Board of Appeals could provide. . . it had a necessary moderating effect on the more vociferous angry crowd, mollifying them, making them see. . . life's higher purpose, so to speak and [enabling] us to move on . . . [and] concentrate on the case.<sup>199</sup>

### ***Accessing Municipal Networks***

Voorhees Township also used the time in between hearings beneficially. Its consulting engineer, Kevin Becica, networked with the township of Old Bridge, New Jersey, which had reviewed a mosque application in 1999-2000. The Old Bridge applicant provided its ZBA with a position paper detailing the need for the mosque, estimating expected numbers of worshippers and growth forecasts, and establishing a draw-radius for attendees, and describing. Ms. Becica shared it, and the conditions for the Old Bridge approval, with the Voorhees ZBA and the applicant's attorney. In response, Mr. Rahman presented a similar document at the continuation of the site plan review. Additionally, he wrote an editorial for the *Philadelphia Inquirer*, making a persuasive case for the mosque and offering a precise description of Islamic principles and practices.<sup>200</sup>

## **PART XI:**

### **HEARING #4: PRELIMINARY AND FINAL MAJOR SITE PLAN REVIEW, 6 NOVEMBER 2003**

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The press coverage leading up to this hearing, as well as the organizing efforts of opposing neighbors and the Coalition for a Multi-Faith Democracy, resulted in a capacity crowd in the ZBA hearing room. The applicant presented updated traffic information gathered in extended monitoring and in consultation with the Township police department. Mr. Rahman reviewed his written submission, emphasizing occupancy limits and the timing and physical requirements of Muslim prayer rituals. The minutes of the hearing, the only record remaining for the session, do

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<sup>199</sup> Jeff Bush, interview by the author, 09/20/2007.

<sup>200</sup> Zia Rahman. "A Display of Faith, a Test of Principle." *The Philadelphia Inquirer*, 10/13/2003.

not reflect any discussion of the interior or exterior design of the mosque, its material palette, height, or the particular uses that would be made of each interior space. This apparent oversight would create tremendous problems as construction began at the site.

Twenty-one members of the public spoke; eight were in support and 13 opposed; eight opponents appeared before the board for the first time. Board members and neighbors interviewed for this research reported a high degree of tension in the room, fueled particularly by the presence of local and Philadelphia-based print and broadcast media. Several references were made to press insinuations that the board was motivated by bias and that opposing neighbors were bigots; during the public comment period, there were several seemingly heated exchanges between speakers and board members along these lines. There also was a strained dynamic among coalition members, neighbors and board members over the matter of the standing of supporters. Many who spoke as part of the Coalition for a Multi-Faith Democracy lived in or were leaders of religious communities in neighboring townships, and according to the minutes, one resident asked “how many people outside of Voorhees give us advice on how to run our town and why?”<sup>201</sup>

Despite tensions and apparent reservations on the part of some board members, the preliminary and final site plan for the mosque was approved unanimously. A variety of conditions were imposed with the willing acceptance of the applicant, including an occupancy limit of 90 people; specific traffic control measures and compliance with New Jersey Title 39 Ordinance, which allows police regulation of private, on-site parking; and, most importantly, a boiler plate item upon which the final development of the mosque would hinge entirely:

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<sup>201</sup> Statement of Igor Starik, paraphrased in the minutes of the 6 November 2003 minutes of the Voorhees ZBA.

The applicant has submitted certain plans and documents which were accepted by the Zoning Board as part of its application, and further made certain representations and provided testimony at the time of the public hearing, all of which has been relied upon by the Zoning Board in making its determination. Should there be *any material deviation* (emphasis added) from said documents, plans, representations, or testimony, or from any conditions contained herein, then the Zoning Board may, upon notice to the applicant and an opportunity to be heard, elect to rescind its approval.<sup>202</sup>

To emphasize, the approval and the stipulations upon which it was conditioned were based only upon an architectural elevation of the structure's primary façade, a plan of the first floor, and an engineered site plan detailing such elements as parking, traffic flow and water management. The finality of these drawings appears not to have been discussed in the site plan review hearings.

## **PART XII: MOVING TOWARD CONSTRUCTION**

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The first stage of the site preparation took place in April 2004, when the derelict brick house was demolished.<sup>203</sup> At the same time, preparations for the rehabilitation and new construction related to the commercial building proceeded. As part of regular conformance review procedures, the township's consulting engineer examined architectural and site plan drawings and compared them to the conditions of the ZBA approval. Her documentation of that process acknowledges the supporting architectural drawings as "*Preliminary* [emphasis added] Floor Plan and Elevations, dated June 17, 2003;" these were the same drawings that were reviewed by the ZBA and the public. Ms. Becica determined the plans to be in conformance in late June 2004.<sup>204</sup>

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<sup>202</sup> Resolution No. 03:51, Voorhees Township Zoning Board of Adjustment, Resolution Memorializing Decision. Section on further resolutions, item #4.

<sup>203</sup> Demolition permit and inspection found in the file 277.4, Voorhees Township Construction Department, reviewed June 2006.

<sup>204</sup> Letters from Ms. Becica to Elaine Adams, Assistant Zoning Officer for Voorhees Township, dated 03/03/2004 and 21 June 2004. The conformance approval was documented only in a handwritten file note; no other documentation was available. Items found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

The next month, a zoning permit was issued to the Muslim American community association and a pre-construction meeting was held; no documentation of who attended or what was discussed at that meeting is available.<sup>205</sup>

An application for a building permit was filed in early August. Upon reviewing the plans that were submitted to him by Mr. Rahman, the township construction official alerted the zoning officer that the architectural drawings and site plans did not match what had been approved by the ZBA or submitted for conformance review. The zoning officer requested that current, revised plans be submitted to the township's consulting engineer for review. Based on those drawings, the engineer determined that the new plans differed substantially and therefore were in violation both of the use variance and site plan approvals. Modifications included the addition of a basement, the specification of a second-floor office, and a higher roof line than was previously drawn, including a cupola. The engineer recommended that no further permits be issued for the project.<sup>206</sup>

What followed was a series of tense written exchanges between the Muslim community's attorney, Mr. Hyland, and various township officials. At issue was the degree to which the revised drawings differed from approved drawings, and whether those differences should result in the revocation of all previously issued permits. Mr. Hyland requested a personal meeting with Township officials to discuss contested project elements, but that request was not acknowledged.<sup>207</sup> Township department memos reveal that internal conflicts arose at the same time. Construction officials, required to comply with statutory timelines for the issuance of

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<sup>205</sup> Zoning permit dated 7/23/2004. Meeting is recorded in a handwritten file note; no other documentation was available. Both found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

<sup>206</sup> Letter from Kevin Becica to Agnes Jones, dated 26 August 2004. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

<sup>207</sup> Letters from William F. Hyland to Agnes F. Jones, Zoning Officer, dated 09/07/2004 and 09/13/2004. in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.



building permits and finding no violation of construction codes in the plans, felt pressured waiting for zoning staff to determine next steps.<sup>208</sup> After correspondence from the construction officer in early September, the zoning officer declared the new plans out of conformance with those memorialized in the site plan review, and critically, with the use variance review, and revoked the zoning permit. The applicant was given the option to bring construction plans into compliance or to reapply for approval of revised plans.<sup>209</sup>

The revocation of the zoning permit significantly escalated the degree of conflict between the Muslim community and township officials. Of particular concern to Mr. Hyland was the assertion that the deviations in the building plans justified a revocation not only of site plan approval but also the use variance. He responded firmly to this charge, and the method by which the zoning permit was revoked:

Clearly, the changes make no change whatsoever to the use—it remains a house of worship—and therefore the use variance should remain intact. . . what started as an innocent dispute has escalated into a formal revocation of a zoning permit. . . That is not a decision which should be unilaterally made by the Township staff without the opportunity for the applicant to explain its side. . . a summary revocation of a permit, based upon disputed and contested facts, is not appropriate as a matter of law without some due process being accorded to the applicant.<sup>210</sup>

The urgency staff zoning officers felt to revoke the zoning permit and halt work on the site emanated not only from their own concerns, but also from neighbors, who kept close watch on activities. Several contacted the police, construction and zoning departments regarding perceived unsafe conditions and urged the township to revoke all previously-issued permits. File

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<sup>208</sup> Memo from Charles Bogardus, Voorhees Township Construction Official, to Agnes Brown (Jones), Township Zoning Officer, dated 09/09/2004. Found in Voorhees Township Construction Department file #277/4, reviewed June 2006.

<sup>209</sup> Letter from Agnes Brown (Jones), Zoning Officer, to the Muslim American Community Association, Inc., dated 09/10/2004. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

<sup>210</sup> Letter from William F. Hyland, Jr. to Agnes F. Jones, Township Zoning Officer, dated 09/13/2004. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

letters composed in similar language seem to suggest an organized effort in this regard.<sup>211</sup>

Zoning staff also may have been subject to political pressure, as interested parties contacted the township mayor and drew his office into the controversy.<sup>212</sup>

It is possible that the mayor's influence resulted in a meeting held among the township zoning staff, its consulting engineer and attorney, Mr. Rahman, Mr. Hyland and the project architect shortly after Mr. Hyland's letter was received. There is no record of the meeting's agenda or details of its outcome, but interviewees reported a thorough review of current construction drawings, elevations, and proposed uses, and careful comparisons with approved plans. Staff said that they had the impression that the applicant was trying implement design and use changes that had not been approved; Mr. Rahman recalls feeling insulted by that suggestion.<sup>213</sup> Mr. Hyland recounted his attempt, as well as the architect's, to convey that the basement and office uses were always intended, but had simply not been given scrutiny in the approvals process since so much time was spent on the issues of occupancy and parking.<sup>214</sup> The design changes, they held, were cosmetic, within the footprint originally proposed, and did not change the terms and conditions of the use variance and site plan approval. They further argued that the plans were in compliance with the Township zoning code and the New Jersey Uniform Construction Code. These assertions would be weighed in new ZBA hearings, as agreed by all parties, for an amended site plan review.<sup>215</sup>

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<sup>211</sup> In research interviews, zoning staff related calls from several neighbors, while the construction department file contains two letters dated 09/10/2004 and one 09/18/2004. Found in file #277/4, reviewed June 2006.

<sup>212</sup> The mayor's influence in the case is unclear, although several interviewees referenced his involvement. He is directly referenced in Hyland's 09/07/2004 letter: "I believe that a face-to-face meeting can resolve any questions quickly. I also believe that Mayor Platt should be invited to attend the meeting, since he apparently had received a copy of this letter and has spoken with Mr. Rahman directly about it, although he was not apparently a listed recipient of her [Becica's 08/26/2004] letter. I want to make sure that he likewise hears first-hand that this applicant has not attempted to improperly modify its project."

<sup>213</sup> Rahman interview 11/27/2007.

<sup>214</sup> Hyland interview 10/24/2007.

<sup>215</sup> Letter from William F. Hyland, Jr. to Agnes F. Jones, dated 09/29/2004. Found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

The primary purpose of the amended final site plan review was to examine the new architectural renderings for the mosque and determine whether they constituted a “significant” modification of the plans approved in the site plan review process (see figures 4.7 and 4.8 on next page). The term significant was problematic for all parties to the proceedings as there was no legal definition of it, no solid legal precedent for making a determination of significance, and no established criteria against which to weigh the modified proposal. The mayor had recently appointed a new solicitor, Salvatore Siciliano, to advise the ZBA; he provided the most straightforward, sound legal guidance the board had received on the mosque application to date, and he gave the best guidance he could under the circumstances:

Amended final site plans, when there's a question as to whether they differ substantially from those which were submitted previously for approval. . . a new application may be required. . . [In the] seminal case of Davis v. Planning Board of Summers Point, which is a Superior Court of New Jersey Appellate Division decision from 2000. . . the court sets forth, perhaps fortunately or unfortunately for this board, that there's no authority that defines what changes may be deemed significant or substantial revisions. [Siciliano then cited two other similar appellate division decisions] Those are the terms that we struggle with here this evening. Whether there are material and substantial changes and the board has to make that determination on the basis, setting aside the passionate testimony of the public and looking at the plans that were previously submitted to them, based on their recollection, their notes, their review of the meeting minutes and what's been presented here tonight to make their determination as to whether or not they determine these sets of plans differ substantially that what's been previously presented.<sup>216</sup>

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<sup>216</sup> Comments of Salvatore Siciliano, solicitor to the Voorhees ZBA. Amended Final Site Plan hearing, 11/18/2004. Transcription made by the author.



Figure 4.7 (above, repeated) Concept drawing of the mosque design presented in the 4/3/2003 Use Variance and Minor Site Plan Review. Keith Haberern, AIA, Architect.

Figure 4.8 (below) Modified Elevations for Voorhees mosque proposal presented in the 11/18/2004 Amended Final Site Plan Review. Keith Haberern, AIA, Architect.



In addition to the frustration caused by terminology and boundaries of the review, tensions were heightened by overt and implied accusations about the motivation for the changes to the exterior design and uses for interior spaces. There was a distinct sense among some members of the board and the public that the applicant had purposely deceived the ZBA and withheld information for the sake of securing approvals. Several members of the public used the term “bait and switch” to refer to the way the process had played out. The credibility of Mr. Rahman was questioned by others, particularly regarding his seeming inability to provide solid numbers relating to the mosque’s membership and the additional activities, such as childcare during services, which would take place in the basement. The applicant and his attorney held to their assertions that these modifications were the natural result of the design process. That specific aspects such as the basement and second floor office were not addressed, they held, were simply casualties of the disproportionate debate relating to occupancy and parking:

The fact remains that what happened at the time, as you recall, a rather emotionally charged application was considered over a period of time by this board. . . The only plan that was submitted to the board at the time was a plan labeled as a preliminary architectural plan and it was limited to the first floor. That is correct. That plan did show two stairways—one going down and one going up. The reason we did not discuss it, frankly, is because of the tremendous focus that was placed on the occupancy of the building for its purpose as a house of worship.<sup>217</sup>

When questioned about the timing and evolution of the design, the architect responded that until his client knew he had secured necessary permits, they had not developed more than conceptual drawings. In a later interview, he noted that when working for non-profits with limited budgets, he commonly delays advanced design development until after approvals are secured. He did not expect, therefore, that design changes made after the site plan approval hearings

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<sup>217</sup> Comments of William F. Hyland, Amended Final Site Plan Hearing, 11/18/2004. Transcription made by the author.

would pose any problem.<sup>218</sup> Even if this were the case, the fact that the designs were modified after conformance reviews still was problematic for members of the board and the public.

The tenor of public participation in this hearing was far more tense than any previous hearing. At times the nature of exchanges was combative, with audience members shouting at the board and applicant. The presence of print and broadcast media may have encouraged this raucous behavior. Eighteen individuals spoke, half of them for the first time. Whereas in previous hearings speakers commonly cloaked exclusionary motivations in the language of land use, anger and fear were now baldly exposed :

ACCARDO: I do want to point out that the cupola is in essence really called a minaret by the Muslims of a mosque. And it's a sign of power over the community. . . I mean board, use the word. You've been duped. You've been snookered. I mean what are the words?<sup>219</sup>

BAKSHI: I just have one comment Mr. Rahman had made earlier. And that is he has an average of I think 25 kids in the basement. . . The average family, Muslim family, has six kids per family. That, my calculation is about 90 kids.

CHAIR: From where do you get that information?

BAKSHI: That is public information. Literature. Literature.

CHAIR: Do you have copies of the literature?

BAKSHI: I can provide the board with copies of the literature. . . just keep that in mind.<sup>220</sup>

NORBURY: [Those of us who are here] live in the neighborhood. . . sometimes I don't know if I live in Voorhees or I live in Amsterdam. Because we now have a mosque going up, we have a garden center that's run by transvestites, and right next to that we have a psychic that has a purple glowing light on all hours of the night.<sup>221</sup>

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<sup>218</sup> Interview with Keith Haberern, AIA, 11/1/2007.

<sup>219</sup> Comments of Vincent Accardo. Meeting of the Voorhees Township ZBA 11/18/2004. Transcription made by the author.

<sup>220</sup> Comments of Rona Bakshi, 11/18/2004 ZBA hearing.

<sup>221</sup> Comments of Michael Norbury, 11/18/2008 ZBA hearing.

Despite degrees of nuance in comments and differences of opinion about the intent and timing of modifications, there was little disagreement among speakers or the board that the new submission's alterations were indeed significant. However, controversy abounded regarding appropriate remedies. Deliberations devolved to gavel pounding as the chair attempted to control interruptions, accusations and shouting—from the dais as well as from the audience. Some ZBA members advocated for a return to the previously approved plans, with a requirement for a submitting complete architectural renderings of all floor areas, rooflines and elevations. At issue with this solution was whether staff could review the resubmission or whether those drawings should be reviewed by the full ZBA. Others argued for the revocation of all previously granted zoning permits and filing of new applications for a use variance and site plan approval, which led to impassioned pleas from both the applicant's attorney and the ZBA chair:

SENGES: ...I can't say that in good conscience I feel comfortable that this new and amended plan should be approved. I believe it is substantial in many ways. I believe that the applicant realizes that as well as Mr. Hyland, from their own testimony...

CHAIR: . . .and where would that leave the applicant from the legal standpoint, then? Do they, are we taking them back to square one?. . .It's my understanding that the law dictates then that it's not just site approval that we are rescinding here but use as well.

HYLAND: [firmly] No, absolutely not. Excuse me.

CHAIR: Well, I'm not a lawyer, sir, and I'm willing to hear. .

HYLAND: I'm sorry, Mr. Bush.

CHAIR: No, it's quite alright, I understand. I understand. I'm trying to, forgive me, I'm [thinking] out loud; I am not developing a conclusion here. I'm probing, I'm trying to understand. . . From a personal standpoint—not just personally but also as the chairman. I mean, let's review the scenario where we go back to square one, and we need to then have the applicant come forward again with the use variance. . . that was an egregious experience for the community and for, you know, I think all of us. And I'm not sure if we were to go back to use, you know if the law says we have to go back to use, that really serves the public good here. I'm not

sure that any new information would come forward that would in any substantial way lead us to any other path than to grant use again.<sup>222</sup>

After an initial motion, passed unanimously, to classify the design modifications as significant, the proceedings can best be described as a cacophony of side discussions among board members, shouted exchanges with the public, and the booming voice of the attorney attempting to answer members' questions. It was the board's consulting engineer who calmed the mêlée, providing clarity the attorney did not and instructing the board that they did not need to make any further determinations. The ZBA's rejection of the amended site plan shifted the ball to the Muslim community's court. Mr. Rahman could decide to begin the entire approvals process again with their revised plans, or to return to the Township with a complete set of architectural plans and elevations that complied with their standing site plan approval. After considering his options for several months, Mr. Rahman chose the latter option. Following the conformance hearing, he was quoted in the *Philadelphia Inquirer*:

Frankly, I'm not frustrated. This is God's work. I still believe this project is really important to the Muslim community and to the community at large. I think it will bond people. . . The general way we want to approach things is not to create any conflict, even if we have to give in and give up. You do it for the overall interests of harmony. . . There are still some people who don't like it, who don't like us, but my message is to have patience. We will prove we are not as bad as you think we are. This mosque has opened doors.<sup>223</sup>

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<sup>222</sup> Comments of Jeff Senges, Jeff Bush, and William Hyland, Amended Final Site Plan Hearing, 11/18/2004. Transcription made by the author.

<sup>223</sup> Edward Colimore. "Erasing Tweaks in Design Clears the Way for Mosque," *The Philadelphia Inquirer*. 25 April 2005.



The conflict surrounding the Voorhees mosque proposal can best be described as a perfect storm of geopolitical circumstances, planning context and structures, strategy choices, and personalities. Each element on its own would have created challenges in the public planning process; together they nearly crippled it. At its core, public planning is a human activity, subject to the weaknesses and judgments of all participants. There is no single party at fault in the conflict in Voorhees; the applicant, township officials, and the public all contributed. Motivations vary from honest error to strategic choice to basic fear of the unknown. This analysis does not seek to assign blame, but to understand contributing factors and identify learning opportunities for other communities facing similar developments.

### ***Geopolitical Circumstances***

The first public hearing for the mosque development, April 4<sup>th</sup>, 2003, came just three weeks after the invasion of Iraq and eighteen months after September 11<sup>th</sup>, 2001. The implications of this timing on the progress and outcome of the hearings cannot be overstated; geopolitical events were the single largest contributing factor to the conflict around the mosque proposal. That the perpetrators of the attack on America were Muslim, and that America was entering a war with a predominantly Muslim nation, immediately heightened suspicions of Mr. Rahman and his community. Literally everyone interviewed in the study referred to these events and their negative influence on the process; former ZBA member Carmen Console addressed the matter very plainly:

[My] initial reaction was absolutely not. It was Muslims. We're at war with Muslims. It was an honest initial reaction. And I think that was the whole board's reaction. And it's a good thing we did not act on those initial feelings. And we sat and listened to testimony and [educated ourselves]. Because I think if [we had had to make a decision that first night] it

would have been turned down immediately. Because of the war. . .nobody wanted to know anything about Muslims.<sup>224</sup>

Overt references to potential terrorist activities in the mosque were made during the public comment periods of hearings, in the anonymous flyer distributed by opponents, and in press coverage. It should be acknowledged that these views were in the minority among topics covered by the public, but they received a disproportionate amount of community and media attention. This problem will be addressed more specifically under hearing management.

The impact of international events led to a less obvious concern regarding violence. Several speakers referred to potential attacks against the mosque by activists and/or by Muslim sectarians. The root of this concern appears to have originated with a neighbor who is a federal attorney and had some professional knowledge of hate crimes against other American mosques as well as federal surveillance of Muslim communities.<sup>225</sup> The similar themes of speakers along these lines, even in the first hearing, suggests early attempts to organize opponents' response. As will be described, references to September 11<sup>th</sup> and Iraq lessened as some in the neighborhood strategized more effective means for influencing the approvals process.

### ***Township Planning Context***

Although geopolitical events are the most obvious irritant in the Voorhees review process, I contend that they were merely an addition to the already vexing planning environment that existed in Voorhees for any new, sizable development. As suggested in the introductory material of this chapter, Voorhees had experienced rapid population growth in the two decades prior to the mosque proposal. Open space was being lost rapidly to commercial and residential development, and, despite having the lowest municipal government equalized property taxes in

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<sup>224</sup> Carmen Console. Interview by the author, 09/20/2007.

<sup>225</sup> Accardo interview 11/3/2007, Pascht interview 11/2/2007 and Puchala interview 11/14/2007.

Camden County, residential tax rates were perceived to be skyrocketing in the township.<sup>226</sup> In compliance with New Jersey statutory mandate, the Township undertakes an update of its master plan every six years, and the process draws a respectable amount of public participation. The most recent update prior to the mosque proposal was approved before a public audience of almost 200 people in late 1998.<sup>227</sup> Many of its primary goals and objectives—the expansion of the commercial tax base to offset residential tax burdens; the limiting of new housing development and buffering of residential areas; the preservation of open space and reduction of impervious coverage—were still fresh in the minds of mosque opponents and referenced with a striking degree of facility and familiarity. Clearly, broader township planning concerns were also of consequence in the neighborhood around the mosque, and residents generally felt invested in and protected by the township’s land use planning process and outcomes. Similarly, though less concretely, several neighbors and a former board member expressed the perception that development in Voorhees was uneven and prejudiced toward the protection of wealthier neighborhoods.<sup>228</sup> One member of the public expressed this sentiment in the amended final site plan hearing:

. . .these particular [undesirable developments] are happening on the eastern side of Voorhees. I do believe that most of the open space that the township is purchasing is happening on the western side of Voorhees. So, you need to listen to the people that live in the eastern side of Voorhees. There’s been no new parks, there’s been no new open space. We just get everything on our side of town that you all [ZBA members] don’t want on your side of town.<sup>229</sup>

### ***Neighborhood Planning Context***

Traffic, parking and buffering are common concerns expressed in most development reviews. They are so common, in fact, that they are often dismissed as mere opposition tactics to stop

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<sup>226</sup> Joseph Augustyn and the Alaimo Group, *Voorhees Township Master Plan Update*, 23 September 1998. Page 2.

<sup>227</sup> Augustyn interview, 1/23/2008.

<sup>228</sup> Console interview, 09/20/2007.

<sup>229</sup> Comments of Michael Norbury, Amended Final Site Plan hearing, 11/18/2004.

development, and are referred to as NIMBY (not-in-my-backyard) smokescreens for exclusionary desires. Such concerns were no small part of opposition arguments in the Voorhees mosque case, and a sizable amount of hearing time was dedicated to their discussion. I interviewed several people who had voiced these concerns, and almost all felt that they were summarily dismissed by the ZBA. Township staff, advisors and ZBA members held views that ranged from a sense that statements made about parking, lighting and the like were mere ruses for bigoted positions to a sincere feeling that the board had considered the issues and fairly balanced them against mitigating factors. Objectively, the reality is somewhere in the midst of these opinions.

In the several years prior to the mosque proposal, the surrounding neighborhood had faced a number of traffic and parking related issues that helped set the strained tone for the mosque review. The intersection that hosted the development site, Haddonfield-Berlin Road and Lafayette Avenue, was the neighborhood hot-spot, where several traffic problems culminated. Chief among them was a failed traffic circle located about a mile from the development site. The circle was to have managed traffic generated by routes 73 and 30, but by all accounts it was a dangerous, dismal failure and has since been removed. To avoid the intersection, drivers cut from Haddonfield-Berlin Road across Lafayette Avenue to join route 73, so that residential Lafayette was carrying a heavy load of commuters and commercial traffic it was not intended to host. Additionally, Haddonfield-Berlin Road was experiencing distinct traffic increases sufficient to warrant its widening. As the mosque review was being conducted, Camden County was finalizing plans to rebuild this Cherry Hill to Berlin corridor as a four-lane road. Residents who already felt burdened by the steady stream of cars were concerned that the widening project would only make matters worse. The added traffic that might be generated by a house of worship only exacerbated worries.





Source: ESRI, NJ State GIS

Map 4.5 Location of failed traffic circle at confluence of State Routes 73 and 30 and County Road 561/Walker Avenue, shown in relation to mosque development site. The circle was removed just prior to the mosque development proposal, creating traffic diversions and related tensions in the neighborhood around the site.



Another institutional development at the same intersection had particularly vexed neighbors on Lafayette Avenue. The Chesterbrook Academy, a private school that opened in late 2001, generated heavy bus and car traffic at drop-off and pick-up times, and, according to public testimony, had insufficient parking to meet demand. A particularly vocal neighbor, and arguably the homeowner who would be most impacted by the mosque development, gave extended testimony on and interview discussion about overflow parking on his lawn and, in his view, inadequate township response to his myriad complaints.<sup>230</sup>

Finally, the *absence* of certain development types around the mosque site also seems to have contributed to tensions in the review. Unlike other sections of Voorhees, the Haddonfield-Berlin Road corridor in the immediate area of the mosque site has a striking lack of large-scale, national chain commercial development. Certainly, small plazas and single-lot, family-owned businesses exist, but their scale is far smaller than commercial lots in other areas, their parking is proportional, and they are buffered from surrounding neighborhoods by a fair amount of vegetative cover. There are no religious establishments in the immediate vicinity. Small-scale commerce along the Haddonfield-Berlin Road seems likely to be short-lived as Voorhees develops, but during the mosque proposal it was a recognizable, much-coveted asset to the neighborhood, and its potential loss seems to have contributed to fears. The unusual character of surrounding commerce was referenced often in hearings; concern over its loss was drawn out very specifically in an interview:

. . .we were concerned when we moved here [about how the area would change] because we knew that Haddonfield-Berlin Road wasn't going to stay a two-lane road and we were wondering what would happen if . . .the lots right in front of the road. . .would have a whole line of strip malls there. . .That was a concern. But ultimately we decided

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<sup>230</sup> Comments of Edward Pascht, all hearings related to the mosque proposal; also interview by the author with Edward & Nora Pascht, 11/02/2007.

that unless we moved way down. . .we were really going to have to deal with it in some way shape or form, so we just said let's wait and see what happens.<sup>231</sup>

Township zoning staff acknowledge that the relatively low density in that section of the township has brought it under intense development pressure, particularly from business interests.<sup>232</sup>

### ***Township Staffing and Consulting Structure***

As addressed in the *Background* section of this chapter, the staffing structure in Voorhees Township is typical of New Jersey municipalities: a zoning and planning staff with little formal training in land use manages day to day interactions with the public and stewards applications. The staff accept submissions, ensure their completion, and deliver documents to consultants for review. Politically-appointed consultants manage the legal, engineering and technical planning issues; they assess code and ordinance compliance and compile preparatory summaries for ZBA and planning board members. One should not assume from this division of labor that the Voorhees staff was incapable of assessing applications or anticipating problems with them. The assistant zoning officer in particular had a fine-tuned understanding of the zoning code and its relationship to the Voorhees master plan, as well as a solid familiarity with the New Jersey case law that influences ZBA function and decisions; she also seemed to be well-versed in the intent of The Religious Land Use and Institutionalized Persons Act (RLUIPA). However, neither she nor the zoning officer was empowered to make judgments about the application or to interact with Mr. Rahman in advance to troubleshoot potential sources of conflict.

Even setting aside any technical expertise that the zoning staff may have had, they also had a particular knowledge that, had they been more actively involved with application assessment and management, they might have contributed to early conflict minimization. Each had worked

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<sup>231</sup> Madelyn Quattrone, interview by the author, 11/03/2007.

<sup>232</sup> Elaine Adamson, Assistant Zoning Officer, Voorhees Township. Interview with the author 10/25/2006.

for the village for a number of years and had familiarity with neighborhoods and residents, particularly those who had previously participated in public hearings. The staff may have been able to anticipate something of the way the community might respond to the proposal and may have recommended modifications that could have been more appealing to neighbors. Of course, the emotions of geopolitical events brought an unprecedented lack of predictability to the process, but first-hand neighborhood knowledge may have allowed the staff to recommend positive advance changes to some aspects of the proposal.

For the consultants charged with tending to the details of the proposal, Voorhees was one of multiple townships for which they conducted the same types of reviews. While managing the codes and ordinances of several municipalities was routine for all of the consultants involved with the mosque review, one can well imagine the increased likelihood for oversight or error while managing concurrent, complex reviews. The best example of this may be the fact that although staircases were represented on the first floor plans that formed the basis of use discussions, no plans for the basement and second floor were requested for review.<sup>233</sup>

The greatest weakness in this consultancy structure, as was startlingly clear in the public record and agreed upon by the majority of interviewees, was the board's first attorney, K. Friel. A principal in her firm was actually the mayor's appointee to the post, but he named Ms. Friel to act in his stead.<sup>234</sup> She apparently had little land use experience prior to her posting; hearing tapes reveal that she also had little skill advising a civic board through a contentious public process. Former ZBA members recall that Ms. Friel did provide some perfunctory guidance in caucus sessions before public hearings, but that her counsel was woefully insufficient. They

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<sup>233</sup> It should be noted that consulting engineer felt that this oversight was the result of the inordinate amount of hearing time devoted to occupancy calculations. It is true that prior to the amended final site plan hearings, there was virtually no discussion of floor plans in public session. Interview with Kevin Becica, consulting engineer to the Voorhees ZBA. Conducted by the author 11/01/2007.

<sup>234</sup> Interview with Salvatore Siciliano, final township attorney for the mosque review. Conducted by the author 11/02/2007.



reported not having a real sense of what aspects of a religious property's design they could actually regulate without infringing on free practice. Specific comments included:

We really needed some heavier expertise. And there were times when I got the distinct impression that I was relying on a rather hurriedly put together [counsel], you know, that crammed for the meeting that afternoon. . . it was just an impression. . . but I think that sometimes I certainly felt that the counsel we were getting was lacking and not as in depth, as solid, as it could be.<sup>235</sup>

[The township] could have prepared us with legal briefs. They could have explained the legal briefs because we hadn't been to law school or had the experience that they've had in order to understand the legalese. . .we needed to know the tools that were available.<sup>236</sup>

Without strong legal guidance, the board struggled to define the boundaries of its review and its actual authority over a religious development. Their floundering escalated the tension in hearings and gave the public a sense that the board didn't know its job. Said one member of the public, "they were out-lawyered" by the applicant's attorney.<sup>237</sup> In addition Ms. Friel made no effort to control the type and duration of public comment, and even reacted audibly to the most incensed member of the public, inciting him to perform with even more gusto.

In response to board and public complaints about Ms. Friel, the mayor appointed a new attorney to the ZBA. Sal Siciliano was another member of the same firm; he was clearly more knowledgeable regarding land use law and process and more assertive in his hearing management style. However, by the time he arrived he could accomplish little more than damage control. The transcript of the only hearing he staffed, the amended final site plan review, suggests that he was focused on creating a strong procedural record in case the township were sued by the Muslim community.

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<sup>235</sup> Interview with Jeff Bush, chair of the Voorhees Township ZBA. Conducted by the author 11/20/2007.

<sup>236</sup> Interview with Todd Weber, former member of the Voorhees Township ZBA. Conducted by the author 09/21/2007.

<sup>237</sup> E. Pascht interview, 11/02/2007.

### ***Hearing Management: Public Education***

Well-run public hearings begin with a brief explanation of the particular board's purpose and a review of the meeting's agenda and course of events, including an announcement of when the public will be able to speak and for what duration. Within each application, the legal requirements and procedure for the review is explained. During the hearing, deviations from the purview of the board on the part of any party are addressed by the chair, the staff, or an attorney. The benefit of this process is an informed and educated public that understands the boundaries of the review and their participation in it. It was almost entirely lacking in the Voorhees mosque review. Without clear explanations, the public, and in some cases even board members, speculated about board, applicant and professionals' motivations, credibility, and competency and struggled to find their place in the process. Frustrations were high for all parties, as, by extension, were tensions. Such failings are not particular to Voorhees; any municipality that does not endeavor to educate the public, or performs the task poorly, faces similar conflict pitfalls. What follows is a specific analysis of educational weaknesses in this specific case.

Voorhees community members seemed to lack perspective on the role of a quasi-judicial board generally, and that of a zoning board specifically. Interviews with community members revealed the incorrect assumption that the ZBA was "their" board and was "supposed to be standing up for" for the interests of "tax-paying residents;" that is, responding to the expressed desires of residents regardless of the development rights of the applicant under the zoning code. It would seem that members of the public viewed appointed lay board members in the same light that they do elected officials, believing that they are both susceptible to pressure and accountable to voters and therefore should have given great weight to public comment. Such essential misunderstanding is endemic to the public planning process, and requires careful attention on the part of boards and attorneys. Without that, the public had little to no sense of the ZBA's true

legal accountability and the criteria on which its decisions would be based. Some members of the opposition theorized that the board was somehow “in the pocket” of the applicant and his renowned attorney. Several interviewees even speculated that because of their perceived wealth and imagined connections to the county Democratic party, Mr. Rahman and Mr. Hyland were able to strong-arm the then-Democratic mayor into pressuring the board to vote in favor of the use variance and review the site plan leniently.<sup>238</sup> Mr. Rahman denies this accusation, and hearing tapes reveal the rigor with which members actually did review the application despite being hobbled by poor guidance.

Evidence for the problem of accountability and public pressure does manifest in a careful comparison of public comments, board comments and interview transcripts. An obvious conversational loop exists among some members of the opposition and the two board members who most strongly objected to the proposal. Although none of these parties admitted having conversations outside of public sessions, their similar comments reveal an exchange of ideas and strategy.<sup>239</sup> The chair, who is not among those just described, freely admitted meeting a neighbor for coffee to hear his concerns. When asked whether the board received any guidance about perceptions of conflict under such circumstances, he stated: “I was not consciously aware of any restrictions about that. No one advised me or anything like that.”<sup>240</sup> A straightforward, public statement from the attorney regarding the board’s purpose and legal obligation to ensure code compliance above all else may have diffused some tensions and dispelled the swirl of speculation around ZBA accountability and susceptibility. Further, such a statement, in framing the applicant as a party protected equally by the development rights enshrined in the zoning

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<sup>238</sup> Pascht interview 11/02/2007 and Accardo interview 11/03/2007.

<sup>239</sup> These two board members were the most aggressive in their lines of questioning and most combative with the applicant and his attorney. Speculation was raised in research interviews with township staff, former ZBA members and opponents that these members viewed their performance on the ZBA as a stepping stone to more powerful political positions within the Township.

<sup>240</sup> Bush interview, 09/20/2007.

code, may have helped reduce the effectiveness of the outsider narrative constructed by a segment of the opposition for the Muslim community.

From a process standpoint, proactive hearing management decisions might have enabled the public to grasp the stages of the review more solidly and avoided related conflict. Although under the New Jersey Uniform Land Use Law it is the applicant who decides to pursue preliminary and final land use approvals together, the staff and consulting professionals might have anticipated the likely pitfalls of this strategy and counseled the applicant to approach the board in stages. This would have given the appearance of a more measured, deliberative approach to a controversial application, and given the public the sense that it had more time to listen, learn and respond to the proposal. The logic of the state code is that in simple development proposals, a combined review saves an applicant consulting fees that would be accrued in multiple hearings. Clearly, however, the multiple variables of the mosque proposal, along with the applicant's incomplete plans, and most importantly the likely controversy that would surround the case, the township should have recommended a review split into preliminary and final stages. As will be discussed, this would have reduced the pressure on the applicant to make definitive statements before he was ready, and it would have allowed the township a more flexible format in which to address uncertainties. Most importantly, it would have allowed a venue for diffusing tensions that resulted from the public perception that the proposal was being pushed through without careful consideration. A similar analysis can be applied to the initial decision to seek a use variance and site plan approval in one go. In the end, confusion, mistrust and simple errors swallowed any hope of procedural and cost efficiency, and dragged the review into many months.

### ***Hearing Management: Control of Public Comment***

Among the greatest procedural failings was the township's poor management of public comment. At the opening of each session, the chair did announce time limits for speakers, but their enforcement was inconsistent. Very little guidance was given to the public regarding the type of comment that could be made, and no statement was ever made that the board would only entertain comments on matters within their purview. Some of the most aggressive violators of this generally-accepted hearing rule were never interrupted; the unchecked boldness seemed to give courage to other opponents who might normally have behaved more civilly. Worse, while the most egregious violators were barely limited, others of more moderate temperament were held to the stated limitations, giving an unbalanced representation to the most radical views. The only real attempt to control comment came early in the process when, following a particularly egregious performance, the attorney began requiring the swearing of speakers; alas the strategy failed. More regrettably, the vitriol of a few infused the process and contributed to a monolithic view of the opposition. In research interviews, some board members, consulting and regular staff, and the applicant often referred to the specific, colorful statements of one or two individuals as having been the views of "the neighbors." The legitimate planning concerns and thoughtful considerations of others were lost in the tidal wave of emotion that was expressed by a small number of fearful, even bigoted speakers.

There is mixed opinion whether public comment should have been more tightly limited to matters of board purview. The chair felt that it was important to air the public's emotion about the mosque, regardless of topic, so that no one felt as if the deliberations were "rigged" in favor of the applicant.<sup>241</sup> Others members felt without time and content limits, public comment unreasonably prolonged the process and created confusion over what issues could be considered in decision making. For the applicant, unfettered comment was the greatest failing of

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<sup>241</sup> Bush interview, 09/20/2007.

the public process; Mr. Rahman said that he felt “victimized” by statements that in his view were racist and fear-based.<sup>242</sup> A neighbor had this to say:

The planning board [sic] should get up and explain to the people what the issues are. That you can’t come in here and complain that you don’t like Catholics and you don’t like Protestants. And you can’t be prejudiced. And you can’t say that kind of things that the one guy, well, he could have been arrested for what he said. You know he actually threatened members of the board. And he went for. . . a long time, about forty-five minutes. And that took away from people who had legitimate concerns and they had to postpone it to the next meeting. But what the board should have done was got up and said look, here’s our job. Here’s the book that we go by. We follow the laws of New Jersey and we’re here to discuss zoning and planning issues. . . we’re not here to talk about religion. And then half of those people could have left.<sup>243</sup>

Even more problematic than anti-Muslim comments were factually incorrect statements made by the public about elements of the application. Neither the attorney, the engineer nor the chair corrected inaccurate statements made by speakers, and because they were allowed to stand in the record, they gained a degree of legitimacy. Further, uncorrected factual errors compounded as other speakers referred to them in their own arguments, and, much like the child’s game of telephone, after multiple iterations the truth was unrecognizable. The clearest illustration of this challenge was the ongoing conjecture over occupancy numbers. As will be discussed, there was uncertainty about exactly how many congregants might use the mosque; in the first hearing alone, the applicant stated numbers in terms of families (15), total individuals (45-60 and later 100-120) and then number of people in rows (5-6 rows of 20). The wide variation was confusing, and in attempting to clarify, members of the public added their own calculations to the mix:

You heard testimony that [occupancy is] somewhere between—and I would like you to check the record—one time it was said that there would be 40 people in a row, in five to six rows. My math shows that to be somewhere between [sic] 240 people, not 120 as it was re-stated a few minutes later.<sup>244</sup>

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<sup>242</sup> Rahman, 11/27/2007

<sup>243</sup> Pascht interview, 11/02/2007.

<sup>244</sup> Comments of Edward Pascht, Use Variance Hearing, 04/03/2003. Transcription by the author.

Since the speaker's request to "check the record" was not addressed and therefore his error left uncorrected, his exaggerated calculation hovered as a possibility in the minds of the public, raising questions of the applicant's credibility and the board's ability to analyze presented data. Similarly, one speaker asserted that the number of variances required for the mosque was a clear indication of its incompatibility on the site and in the neighborhood; the position was readily incorporated into the protests of other speakers. Neither the chair nor the consulting professionals explained the multiple variances are entirely routine for the rehabilitation of non-conforming properties. Without doubt, clarifications and corrections, made as a matter of course, could have prevented the spiraling of misapprehension and conflict around the mosque review.

### ***Influence of Uncertainty within Muslim Community***

Zia Rahman's account of his community's history provides critical insight into his approach to the development application. As described in the introductory section of this chapter, he and the other founding members of the Voorhees mosque had been part of a Muslim community that worshipped in Palmyra, New Jersey, about 15 miles away. Mr. Rahman was among the leaders of that mosque; he reported disagreements over governance issues, and a schism in the membership.<sup>245</sup> Given the divisions, he was not entirely sure how many Muslims would follow

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<sup>245</sup> Although Mr. Rahman presented statistics from the Palmyra mosque to support his own expectations for occupancy and use patterns, he never mentioned that he had been a member there, let alone a leader, or that his community was breaking away from Palmyra. Although in my interviews he did not elucidate his reasons for this choice, I speculate that he may not have wanted the public to fear he was bringing a troubled congregation to the neighborhood. The Palmyra mosque is now infamous for its association with four men who allegedly plotted to attack nearby Fort Dix and were arrested in early 2007. Mr. Rahman was very clear in this research and in press coverage that he had no inkling of the plot, and I have no reason to question his assertion. However, he never clarified what governance disagreements caused him and others to break away and establish the Voorhees community. It is possible that the leadership strife he refers to is related, at its core, to the influence of radical thinkers within that community. Mosques in their intended form are open, tolerant institutions which welcome people of all backgrounds and ways of thinking. That a range of political views would exist in a single community is not at all unusual, and is in principle a very positive aspect of Islamic thinking. However, the presence of individuals with radical thoughts damages the body by creating division and dissent. Action based on those thoughts has tragic consequences for the community, as the full membership tends to be perceived as guilty by association. Press coverage of the Palmyra arrests documents the devastating impact within that Muslim community, as well as on the broader area's perception of the mosque. Recall that when proposed, the Palmyra mosque saw very little opposition, and prior to the arrests it was generally received positively by residents. It is entirely possible that Mr. Rahman sensed trouble on the horizon

him to Voorhees, make the time commitment to establish a new mosque, and endure the financial hardship and other pressures of community building. Having been through multiple parcel searches and then refused use permits, some Muslims withheld their moral and financial support for the Voorhees project until permissions were more certain.<sup>246</sup> Mr. Rahman, therefore, was planning facilities for an uncertain number of worshippers and with an unknown financial base; his demographic projections were elusive, program planning speculative and designs essentially drafts. However, Mr. Rahman attempted to mask all the unknowns in confident surety, perhaps fearing that any hesitation would cost him the approvals upon which both membership and financial support depended. He frequently peppered his presentation and question responses with statements of certainty like “absolutely” and “definitely” when he was in fact making best guesses as to what the final needs and product might be. Such definitives were in stark contrast to the shifting statements he made throughout the review process, and even within single hearings. If the board and the public had the sense that the proposal was a “moving target” as many stated, they were exactly correct.

The speculative nature of the applicant’s presentation not only strained his credibility, it flared suspicions of the Muslim community and fed into the fears caused by geopolitical circumstances. To counter Mr. Rahman’s population projections, one member of the public researched national trends, and presented data to the board from the most comprehensive

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for Palmyra, and when proposing his own mosque development felt that withholding his association was the most prudent choice. See:

Kareem Fahim, “Open House at Mosque of Suspects Proves Tense,” *The New York Times*, 05/19/2007, accessed via [www.nytimes.com/2007/05/19/meeting.html](http://www.nytimes.com/2007/05/19/meeting.html) 01/29/2008.

Dina Temple-Raston, “Mosque Attendance Falls After Terrorism Arrests,” Transcript of piece aired on National Public Radio’s *Morning Edition*, 05/30/2007. Accessed via [www.npr.org/templates/story/story.php?storyId=10529148](http://www.npr.org/templates/story/story.php?storyId=10529148), 01/29/2008.

Jason Laughlin, “Worshippers Seek Distance from 6 Suspects,” *Home News Tribune Online*, 05/11/2007. Accessed via [www.militantislammonitor.org/pf.php?id=2904](http://www.militantislammonitor.org/pf.php?id=2904), 01/29/2008. This watchdog website pulled quotes from the article by Zia and Zahida Rahman denouncing the actions of the suspects and used them as banner headlines.

<sup>246</sup> Rahman interview 11/14/2007.



study of the American mosque available at that time.<sup>247</sup> Whereas Mr. Rahman proposed static to insignificant growth for Voorhees Muslims, the study describes Islam as the fastest growing religion in the United States and an average mosque population of 1,625 individuals. These facts were seized upon by several speakers and reintroduced on repeated occasions. Mr. Rahman could not counter these data with solid statistics of his own, nor did the hearing format allow him or his attorney to address, in the same hearing, assertions made during public comment. His silence, then, served for some as confirmation of the deception they believed him to be perpetrating, and most certainly heightened tensions in the process.

On a process level, inconsistencies caused disproportionate focus to be placed on certain aspects of the application, and, by extension, caused critical oversights in others. This is particularly true of occupancy and related parking calculations. An inordinate amount of time was spent on the matter, due in large part to varying testimony regarding membership by Mr. Rahman. Final occupancy was not established until the second use hearing, and was based on national building codes (BOCA) and the architect's space calculations rather than on membership estimates. Until then, parking calculations and therefore site plan discussions were paralyzed by speculation over the number of spaces required. The question was particularly problematic because mosques lack pews or other seats, and the Voorhees zoning code (and most local zoning codes) calls for parking calculations to be based on a space-per-seats calculation. Lacking strong township leadership to guide discussions, literally hours were spent on this topic to the near exclusion of all others. It was in this mêlée that the basement and second floor uses were missed, as well as the preliminary nature of the exterior design. Later, some opponents called the attention to parking a diversionary tactic used by the applicant to prevent the careful scrutiny of the larger plan.

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<sup>247</sup> See Ihsan Bagby, et. al. *The Mosque in America: A National Portrait. A Report from the Mosque Study Project.* Washington, DC: The Council on American-Islamic Relations: 2001.

It seems more likely that the review failure is a product of the applicant's request for final review of a clearly undecided, preliminary plan. Again we see the benefit that all parties would have derived from separate preliminary and final reviews. Granted, the "final" site plan review did unfold over several hearings and in theory there should have been ample opportunity for necessary scrutiny and public response. However, I believe there was a psychological factor at play that gave an intimidating strength to the label "final" and caused the public to feel unable to influence outcomes. Staging this complex, conflictual proposal into preliminary and final steps would have given the public a sense that careful attention was being paid by the township, and that they had real opportunity to affect the end product. Further, modifications made after a "preliminary" review would likely have been accepted as the natural outcome of a cumulative design process, rather than as deceptive changes made after a "final" review.

### ***Strategic Legal Choices***

In addition to the strategic choice to combine preliminary and final reviews, several others heightened the degree of conflict in the review process. Some were choices made by Mr. Rahman independently, and some were made on the advice of his attorney.

First, Mr. Rahman and his attorney agreed that he would be the only representative of the mosque to speak in public hearings.<sup>248</sup> For Mr. Rahman this was ideal, since he felt that it would be difficult to keep multiple volunteers on-point and updated on changing aspects of the proposal. His attorney preferred to have one contact and to prepare only one speaker. While one can certainly understand the process benefits of this decision, it also created difficulties. Mr. Rahman was born and raised in Pakistan and his English is heavily accented. In my research, I work with many Pakistanis and feel very comfortable with the accent, and yet I sometimes have difficulty comprehending Mr. Rahman. I surmise, then, that board members and the public may

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<sup>248</sup> Information in this paragraph is drawn from my interview with Mr. Rahman on 11/27/2007.

have found his speech even more difficult to understand. More subtly, his accent may have contributed to the perception of Mr. Rahman as an outsider or foreigner despite his American citizenship. Further, by not including other members of the mosque in the presentation, particularly American-born members, the community remained anonymous and therefore more readily feared. That sense of the unknown was exacerbated by the fact that Mr. Rahman requested that only a few members of the mosque attend hearings, and selected them based on their “temperament” so that they would not be disruptive or go off-message during the public hearing portion. While again this rationale is understandable, I believe that it reinforced the sense of the unknown. The board and the public could not see who would attend the mosque, and could not recognize them as township residents and neighbors.

Attorney Hyland also had strong views regarding the level of detail that Mr. Rahman should reveal about the rituals that would take place within the mosque. He felt that the zoning board would never ask how Baptists or Catholics pray, nor would it be legally appropriate for them to ask how Muslims pray. The practice of Muslims, he held, was beyond the purview of the board and had no bearing on the use variance or the site plan review, so it should not be a topic of discussion in the hearings. Mr. Rahman felt differently, and reported that he had wanted to provide a more educative description of prayer services, and even wanted to perform prayer in the hearing room so that people could see for themselves. Mr. Rahman recounted his attorney saying “absolutely not; not while I’m representing you.” He believed that such a display would mean that the Muslim community was being held to a higher legal standard than other religious groups, and was being subjected to unconstitutional deliberations.<sup>249</sup> While Mr. Hyland may have been entirely correct from a legal standpoint, this decision was exactly incorrect from a conflict management perspective. Mr. Hyland and Mr. Rahman reached a compromise, and a

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<sup>249</sup> Rahman interview 11/03/2007.

brief description of prayer rituals was offered. The small bit of public education that it provided was insufficient, and in fact it may have created in even more skepticism.

The practice of Baptists and Catholics is widely known across America; that of Muslims is not. A mosque was being proposed in a community that in general had no idea of what happened in such a place; there were many suspicions about what *might* happen in such a place. A clear description of prayer rituals likely would have dispelled some fears and allowed a tighter focus on actual planning issues. For example, most people envision religious services as being conducted in unison, with all participants starting and finishing at once. In Islam, while it is preferable to pray in unison, one's late arrival means simply that one joins the service already in progress and then continues after the others are finished; additionally, the devout may perform additional prayers after others have finished and departed. The result is staggered arrivals and departures, which, logically, translates to a different traffic pattern than one might expect for a mainstream Christian congregation. Similarly, Mr. Rahman did not clearly explain that although attending the mosque at all prayer times is the ideal for Muslims, the reality is that most do not pray in the mosque on a daily basis; they pray wherever they can during their work and school days. The only required congregational prayer is held at roughly mid-day on Friday. For this reason, traffic impacts would be greatest on that day and minimal on all others.

Lacking a full description of the requirements of Islam, the audience and the board heard only Mr. Rahman's proposed occupancy levels and his assertion that the neighborhood could expect zero to three attendees at most services. Contrasted with commonly-seen media images of mosques packed cheek-by-jowl, his assertions about use, therefore, seemed somehow unbelievable, even deceptive, to many in the audience. And, because the primary discussions of occupancy and use patterns occurred early in the process, his credibility was damaged at the outset.

### ***Strategic Design Choices***

Mr. Rahman's uncertainties about his project also were a major contributing factor to the conflict escalation around design issues. Because of his limited resources, he could only engage his architect initially for the purpose of concept sketches, and these were presented to the Voorhees ZBA. He anticipated that with land use approvals in hand, he would have a better sense of possibilities on the site and would have greater access to donor contributions. Asking the architect, Keith Haberern, to develop anything other than a preliminary sketches until he had approvals was not only a financial impossibility, it seemed illogical to Mr. Rahman.<sup>250</sup> His assertion was supported by Mr. Haberern and Mr. Hyland, who reported that in their experience around the state of New Jersey, complete and final elevation designs were not necessary for site plan review. They both held that outside of an historic district, exterior design, including modifications to that originally presented, was of no concern to a ZBA unless it somehow violated limitations of the zoning code such as height or roofline specifications. Further, they argued, the township had no design guidelines beyond those that applied to regulated historic properties, and it therefore had no basis for judging aesthetics.<sup>251</sup> The township interpreted statutory law differently, and, based on a standard clause in ZBA resolutions, held that *any* material deviation, including to the exterior form, could result in the rescinding of approvals.

It is possible that the tension over exterior design could have been avoided or at least reduced. Had Mr. Rahman been able to engage Mr. Haberern more extensively and earlier, he might have been able to present a better visual representation of an evolving design. In the use hearings, only a single concept drawing for the primary façade of the prayer hall was presented. That static elevation was then presented all through the site plan hearings. It remained the sole two-dimensional representation of the proposed mosque even as plans changed—first, as

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<sup>250</sup> Rahman interview 11/27/2007.

<sup>251</sup> Hyland interview 10/24/2006; Haberern interview 11/01/2007.

facilities were reduced from one building to two; then as modifications were made based on structural discoveries; and, most importantly, as Mr. Rahman's resources became more sure and design and programmatic desires more distilled. Floor plans were updated and presented in public hearings, though the board and the public felt not as completely as they should have been. However, I would argue that without experience reading architectural plans, most people find them difficult to understand and instead focus on two-dimensional representations they can relate to. This was certainly the case with the public in Voorhees, as speakers held firmly to the drawing they had seen, regardless that it no longer reflected physical realities of the modified plan. Even experienced board members didn't seem make the leap in logic to know that the early elevation was no longer a possibility.

The design analysis cannot end with the assertion that individuals couldn't read plans well enough. The blame must be shared by the management of changes. Had Mr. Rahman and his representatives been more forthright about the evolving state of plans, the public perception that they were somehow attempting to "slide through" multiple, incremental changes might have been avoided. More importantly, by the end of the site plan process the applicant and his attorney should have recognized the need to be very cautious as they proceeded to construction. Even if the men felt strongly that they were within their legal rights to modify the exterior of the building and make minor interior modifications, they should have managed the submission of altered plans more carefully. All parties were exhausted by conflict by the end of the hearings, and certainly, given pressures from neighbors, township staff were keeping a keen eye trained on compliance submissions. Submitting still-preliminary plans to the planning office for compliance review and quite different final construction drawings to the building department for permits could have been perceived at best to be amateur and at worst to be deceptive. The reasons for this error were not apparent in my research, but the outcome was abundantly clear—a new round of misperception, mistrust, and conflict in the public process that followed.

Experience should have warned against this action and encouraged a proactive approach to the township, particularly regarding modifications. In the vernacular, an ounce of prevention likely would have been worth a pound of cure.

The initial elevation presented by Mr. Rahman was drawn based on his stated concept that the mosque should be of an assimilative design—that it should blend in with the residential neighborhood around it. Presumably he hoped that a residentially-styled structure would be more palatable to neighbors and the ZBA. However, he did not define exactly what he meant by “blending in,” nor did the board press him to provide specifics. More importantly, the ZBA did not establish mutually-acceptable guidelines by which the final design would be judged. As a result, a building that would conform to the houses around it remained an amorphous and subjective notion. And, by committing himself to an incomplete concept, Mr. Rahman placed himself in an impossible position. No matter what his architect finally designed, it did not, could not, conform to individuals’ expectations. In effect, Mr. Rahman’s initial strong assurances wed him to his preliminary, draft concept, which was seized upon by neighbors and used as a battle cry when the later, modified design was presented:

I understood a use variance was granted for an A-frame roof on top of a building. . . and then eight months later, there’s a synagogue [sic] there. And I don’t want a mosque there. And when I say that I mean something that looks and resembles it. It doesn’t blend into the neighborhoods [sic]. . . I want a nice generic neighborhood. I don’t want what’s now been proposed. And I say it is deceptive. You get your foot in the door and you change everything?<sup>252</sup>

Lastly, conversations with the architect revealed a sophisticated, historically- and locally-grounded design.<sup>253</sup> Its subtleties and thoughtfulness, sadly, were never revealed to the public. By his and Mr. Hyland’s logic, the theory of his final design was not of any concern to the board,

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<sup>252</sup> Comments of Craig Mitnick, Amended Final Site Plan review, 11/18/2004. Transcription by the author.

<sup>253</sup> Paragraph drawn from Haberern interview, 11/01/2007.

but I would argue that it would have contributed much to the re-packaging of the Muslim community as American and woven into the fabric of Voorhees Township. Mr. Haberern is a member of a Protestant congregation in the City of Philadelphia; the design of his own historic church draws on the 19<sup>th</sup>-century fascination with things Classical and Egyptian. As he considered his design for the Voorhees mosque, he thought that it would be appropriate to quote this important period of American history, when we turned east for aesthetic inspiration. The design vocabulary included a strong pediment and corner quoins, embracing the original Craftsman-roofline and dormers of the structure. Its residential beginnings lingered, imbued with a sense of dignity and distinction. The crowning glory would have been a fixed-light cupola, echoing the typical octagonal barn roof ornaments that graced Camden County farms tilled by German immigrants in the 19<sup>th</sup>-century. Together, he felt, these elements passed the architectural heritage of an immigrant-derived nation and local community to Muslim immigrants, and extended a form of cultural blessing on their endeavor. Without Mr. Haberern's eloquent description, the opposition was left to interpret the design as a "bait and switch", and in the case of the cupola, which was understood, despite correction, as a minaret, as a symbol of power over the neighborhood.<sup>254</sup>

### ***Influences On and Strategies of an Organized Opposition***

Research interviews identified an effort to organize among some neighbors. Although no one would admit to being part of the group, reasonable speculation is possible based on the repetition of ideas presented in hearings and similar comments made in interviews. Assumed relationships among parties allows the theory that cumulative, cooperative thinking informed an approach that exacerbated the level of conflict in the hearings. A confluence of educated, passionate, persistent individuals shaped a formidable opposition. One brought the experience of a family member who had converted to Islam and seen mosque growth first hand. One

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<sup>254</sup> Distilled from public comments in the Amended Final Site Plan Review, 11/18/2004. Transcription by the author



brought a determination to educate himself, from credible sources, about the rituals of Islam and demographic trends among American Muslims. Another brought the finely-honed persuasive skills of a prosecuting attorney. All brought the tenacity that allowed them to sit through five hearings over a two-year period. I contend that it was this group that made the informed and conscious decision to cloak underlying fears about Muslims in the language of land use. The greatest contribution to suspicions, I would argue, is the professional experience of one neighbor, a federal criminal prosecutor. His duties afforded him knowledge of federal surveillance practices for mosques, as well as the transnational networks suspected of funding and shaping radicalization efforts in some US mosques. It should be noted that most Muslim networks have absolutely nothing to do with terrorism; most fund charitable efforts and the provision of clerics for Muslim communities. Still, this neighbor surely had the worst scenarios in mind when participating in opposition to the Voorhees mosque, and his assertions about “foreign funding” and “Saudi funding” were recurrent among speakers in the speculated coalition.

I want to be clear that I maintain that some of the land use concerns expressed by these neighbors were entirely legitimate. But, setting aside the question of design, land use concerns were systematically addressed by the Muslim community and most opponents were reasonably satisfied. And yet, as the process wore on, some individuals persisted in their protests even as their demands were met. It seems likely that for those individuals, unspoken exclusionary desires, likely based on fear and bias, were the true motivations for their resistance.<sup>255</sup>

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<sup>255</sup> See the work of Debra Stein, specifically, *Winning Community Support for Land Use Projects*. Washington, DC: The Urban Land Institute, 1992. Pages 143-145.

### ***Supporting Coalition***

Depending on one's point of view, the involvement of Lori Volpe and her Coalition for a Multi-Faith Democracy either increased or reduced tensions in the review process. As was mentioned previously, some felt that their impassioned pleas for tolerance and openness helped to minimize overt bias and character attacks in public comment. By reaching out to regional and national media for coverage, the coalition did shine a light on overt exclusionary tactics based on bias, and did help to shame the worst offenders away from the podium. However, that same spotlight also had negative effects that contributed to increased tensions. First, it forced bias-based opponents to re-tool their strategy and cloak their arguments in the language of land use, thereby requiring the ZBA to give legitimate consideration to land use questions which might not otherwise have been at issue. Second, the media attention intimidated some who did have legitimate land use concerns but didn't state them for feared of being painted by the broad brush treatment of opponents as bigots. They were pushed into defensive positions that made the issues they raised seem insincere. Mounting bitterness ensued, and with it the level of tension in the hearing room. The applicant's attorney raised another, perhaps more problematic result of the coalition's good intent. The impassioned speeches made by Ms. Volpe and others, he contended, placed a disproportionate focus on the matter of religious freedom, which after the use variance was granted he felt was no longer at issue. A public and media riled over the question of tolerance distracted the ZBA from their primary charge of determining code compliance. The attention given to free practice, he felt, like the matters of occupancy and parking, contributed to the neglect of significant function and design details.<sup>256</sup>

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<sup>256</sup> Hyland interview, 10/24/2006.



*Figure 4.9 The south façade of the Muslim American Community Association, Voorhees, New Jersey, as built.  
Photo KE Foley.*

The public review process for the Voorhees mosque was undeniably damaging to the neighborhood and the township. Tempers flared, reputations were damaged, and relationships were strained. But many positive outcomes also resulted. First, the township, in response the mosque and several other controversial proposals, has revised the development proposal review process to include an advance meeting. At the applicant's request and for a \$500 fee, the planning and zoning staff will meet, along with the board chair and attorney, to review plans in advance of the public hearing process. It is a trouble-shooting session, in effect, that enables the parties to identify problematic aspects of the proposal and modify them. Said the zoning officer:

. . .we give them suggestions. . .to reconfigure. . .then when they come to the board it's more. . .clear sailing. . .[the \$500 fee] is more [worthwhile] than spending thousands of

dollars on the plans and the application and the escrow fees that you have to do when [you] go to the board. . . It's just been more [beneficial] for the township and the applicant. . . It leaves less work for the board to do themselves [in] the fact that a clean plan is coming before them. Their job is to ask the questions of the applicant to make sure that. . . the applicant themselves [sic] has proven the facts [and that] everything. . . meets with the ordinance.<sup>257</sup>



*Figure 4.10 The south and west façades of the Muslim American Community Association, Voorhees, New Jersey, as built. Photo KE Foley.*

The neighborhood has benefited in several significant ways. First, a prominent corner once blighted and fallow is now an attractive, well-maintained parcel that contributes to the vitality of the community. All of the properties around the mosque are improved by virtue of the site's transformation; this betterment was recognized by all interviewees in this research. Second, any resistance on the part of the neighbors, regardless of source, has been eclipsed by the sense that none of their fears were realized. Other than a large crowd at the building's grand opening, parking and traffic have not been a problem. The township has received no other complaints

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<sup>257</sup> Jones interview 10/25/2006.

about cars or any other planning concern that was raised in the hearings. Two neighbors spoke very openly about their views:

Hopefully this will show how honest I am. I couldn't have been more off-base. I mean. . .there hasn't been [sic] people been parked, you know, on the adjacent lots to where I live and things like that. . .the immediate concerns have not come to realization.<sup>258</sup>

[The mosque has been] an excellent neighbor. Good people. Long as we don't end up with a parking problem. . . I believe [Zia Rahman] now. I've talked to him enough times.<sup>259</sup>

It would seem that as predicted by Mr. Rahman, time and experience have proved the intentions and sincerity of the Voorhees Muslim community. Certainly, reservations remain among some neighbors. Some, scarred by the experience of the public review, continue to question Mr. Rahman's credibility; others have lingering concerns about radical activity in the mosque, particularly as the wars in Iraq and Afghanistan wear on. For the most part, however, there seems to be a recognition that, as in any faith, there are some members who have outlier views and sometimes act on them, but for the most part, Muslims are simply people trying to live good and principled lives.

The education of the neighbors and other township residents and officials is due in large part to the positive actions of the Muslim community. Zia Rahman and his wife Zahida have played a central role, taking on new and intentional roles in Voorhees and Camden County. They are active in interfaith activities, speaking at public forums and other religious institutions about the teachings and rituals of Islam. Mr. Rahman was appointed by the township council to chair the Voorhees Diversity Committee. At the time of this research, he and four other members of the mosque also sat on the Camden County Human Relations Commission, which focuses on acts

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<sup>258</sup> Accardo interview 11/03/2007.

<sup>259</sup> Pascht interview 11/02/2007.

of bias and violence based on race, color, religion, national origin, ethnicity, sexual orientation, gender or disability.<sup>260</sup> Until Mr. Rahman's untimely death in 2009, he and his wife were also widely considered the "go-to" people by regional media for issues relating to Islam and Muslims. Most significantly, Mr. Rahman's experience in the public planning process inspired him and another member of the mosque to become more active in township governance; each voiced interest in sitting on the township's zoning or planning board. Mr. Rahman's had hoped that he could help to improve the management of hearings and the experience of all applicants, including religious institutions.

As an epilogue, in March 2007 I attended the public hearing for a new application from the Muslim American Community Association. The proposal would take a small cast-stone house on a lot next to the mosque and repurpose it for use as a home for a full-time imam. The property, long empty and in disrepair, had been purchased by a member of the mosque and donated for the purpose. Four ZBA members remained from the previous review, and a different and far more capable and proactive attorney guided proceedings. The public consisted of Zia Rahman's wife, another member of the mosque, one neighbor, Lori Volpe of the Coalition for a Multi-Faith Democracy, and me. I was surprised at the differences I observed between this proceeding and the use variance and site plan reviews. The board's scrutiny of the proposal was fair and purposeful, and the only true issue of debate was the removal of a single parking space from the plan. The exchange between the ZBA and the applicant, and between the parties' attorneys, was cordial and respectful and even punctuated by humor. Several board members thanked Mr. Rahman for having cleaned up the parcel and contributed an attractive, well-maintained structure to the neighborhood and the township. Members also complimented him for having been true to the conditions of the use and site plan approvals. When the hearing

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<sup>260</sup> Taken from the website of the office of the New Jersey attorney general, <http://www.njhrc.org/>. Accessed 10/17/2008.



was opened to the public, the single resident in attendance told the board how pleased she was to have the mosque as a neighbor and how delighted she was at the maintenance of the property; she gave her support for the current proposal. Mr. Rahman reported that she came of her own volition. The proposal was approved unanimously and with no negative qualifying statements from any member.

In a 2010 newspaper *Philadelphia Inquirer* article reflecting on the Voorhees controversy, Zia Rahman's interfaith outreach was called a "national model" for Muslim communities facing the post-Park51 opposition backlash. His widow as quoted:

'We tell people to look at what happened' in Voorhees. . . 'There was so much opposition, but look what came out of it. We are together, brothers and sisters in this community.'<sup>261</sup>



Figure 4.11 Zia Rahman and another member of the Muslim American Community Association perform the maghrib (sunset) prayer in the recently completed prayer hall, November 2007. Photo KE Foley.

<sup>261</sup> Edward Colimore. "Voorhees Mosque Seen as a National Model," *The Philadelphia Inquirer*. Published 10/21/10. Accessed 9/5/2011 at [http://articles.philly.com/2010-10-21/news/24981693\\_1\\_islamic-center-mosque-proposal-american-islamic-relations](http://articles.philly.com/2010-10-21/news/24981693_1_islamic-center-mosque-proposal-american-islamic-relations).

Although neighborhood and township characteristics, local development history, and specific municipal planning structures and processes in large part shaped the development review for the Voorhees mosque proposal and make it a unique narrative, in many ways the project highlights universal sources of and management strategies for conflict in land use planning. The next chapter, the development story for the Islamic Center of the North East Valley in Scottsdale, Arizona, describes telling parallels, including a subjective design review for a building type with which the community and municipal officials had little experience, and a neighborhood-driven desire to have that building assimilate to the surrounding residential architecture. And in both cases a strong interfaith coalition came to the Muslim community's defense, turning a bright spotlight on issues of religious freedom and bigotry.

Some of the key challenges in the Voorhees process, however, were handled very differently in Scottsdale, and the contrast in outcomes will be evident. The lack of pro-active application management that so crippled the public review in Voorhees is replaced with a thorough process of review and revision long before Scottsdale's public hearing phase. And, whereas the Voorhees Muslim community was put in a position of educating the public about its faith in the heat of a land use hearing and did very little outside of public session in terms of outreach, in Scottsdale we see cooperative and creative approaches to managing opposition. Finally, the raw emotion and overt expression of fear and bias in the Voorhees case are more nuanced in Scottsdale, kept in check by municipal officials and more fully veiled in issues of review board purview.



## **CHAPTER V**

### **THE ISLAMIC CENTER OF THE NORTH EAST VALLEY, SCOTTSDALE, ARIZONA**

#### **INTRODUCTION**

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Lacking analysis, it would be easy to dismiss the controversy surrounding the development proposal for the Islamic Center of the North East Valley (ICNEV) as another casualty of the September 11<sup>th</sup>, 2001 attacks. Although the Scottsdale, Arizona Muslim community had been actively planning their mosque, social hall, library, clergy quarters and classrooms since 1999, the first public hearing for the project was scheduled for three weeks following the catastrophic attacks of 2001. Press accounts depict a significant outcry against the proposal and an organized opposition motivated to a considerable extent by fear and bias against Muslims. But the ICNEV case is far more revelatory about economic, spatial and interpersonal pressures in a rapidly developing suburb; the challenging interplay of expansion and environmental conservation; and the ethnic and religious diversification of an historically white, upper middle class, largely Christian suburb. While exclusionary tactics based in fear and bias were certainly significant ingredients in the opposition to the Scottsdale mosque, genuine land use concerns were a far greater factor in tensions around this development. The ICNEV case is unique in this study because a religious use could be developed as of right in the residential zone in which the mosque parcel was located. As such, its municipal review centered primarily around the complex's architectural design. The case raises intriguing questions about the desirability of design compatibility in neighborhoods, definitions of local architecture, and the privileging of design heritages by stakeholders to conflict.

To familiarize the reader with the city of Scottsdale and its planning context, a brief history of the municipality is first presented, with particular emphasis on the northeast section in which the mosque was developed. Then, Scottsdale's demographic transformation is explored, as well as the history of the Muslim community. A detailed investigation of the mosque proposal's interface with the public planning process is presented, with focus outreach by the Muslim community and process participation by neighborhood residents and developers. A comparison is offered among the reviews for the mosque proposal and other religious land uses in the neighborhood. The role of an interfaith coalition in the case's conflict management is also debated. Next, special emphasis is placed on the analysis of design issues for ICNEV. Finally, the conflict is analyzed and conclusions drawn about the lessons of the Scottsdale mosque development

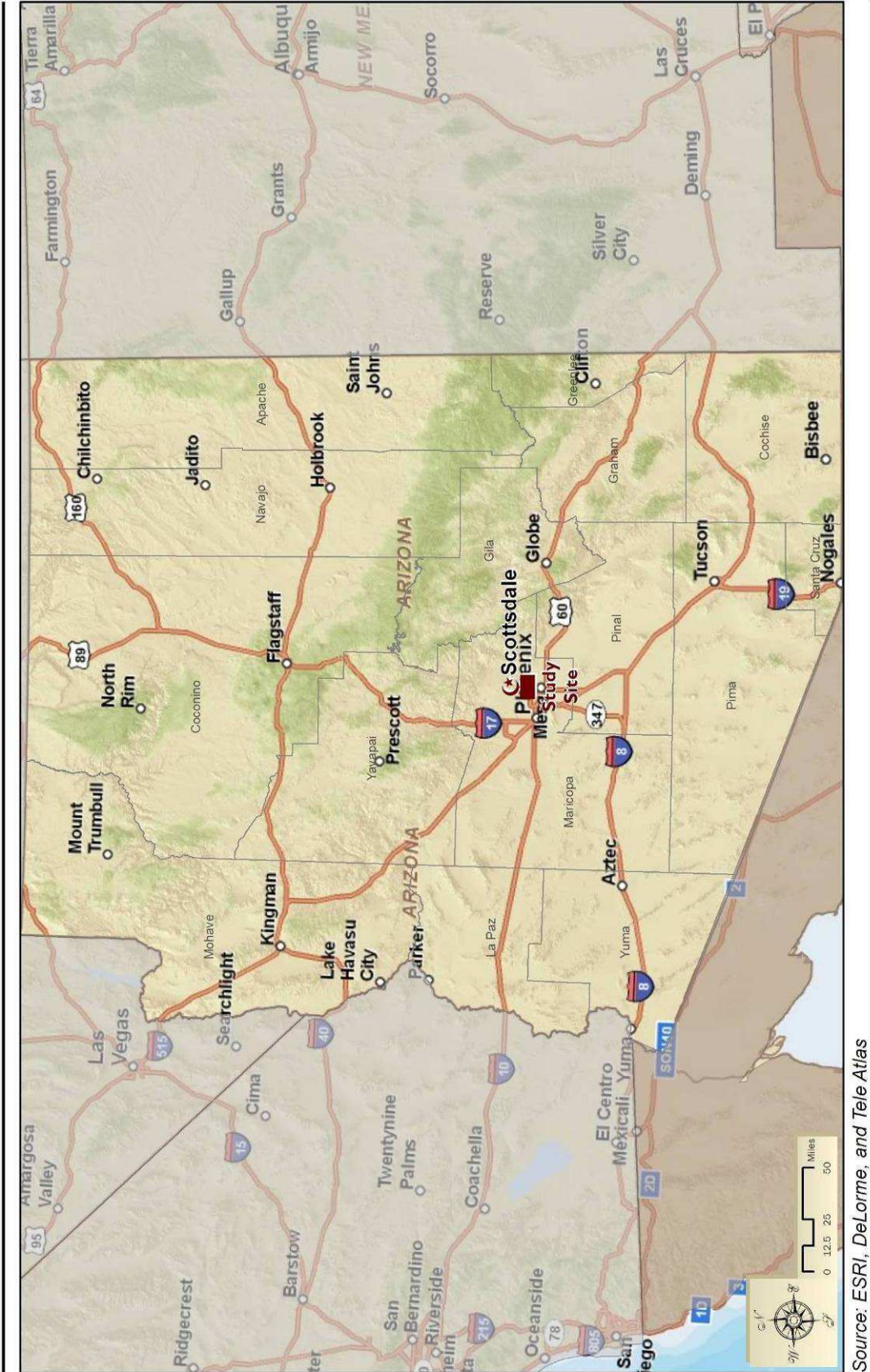
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## **PART I: MUNICIPAL HISTORY AND PLANNING CULTURE**

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Located in Maricopa County, Arizona, the City of Scottsdale is an eastern suburb of the state's capitol, Phoenix and flows from the larger city's streets with little notice. Other familiar suburbs border Scottsdale: Tempe to the south, Carefree to the north. The Salt River Indian Reservation abuts the city to the southeast, and the Tonto National Forest meets Scottsdale's McDowell Mountain Preserve at the northeast municipal edge, the jewel in the crown of the city's desert and mountain ecosystem conservation effort. The area is serviced by a system of state freeways that connect it to Interstates 10 and 17 and a well-ranked municipal airport, as well as Phoenix's Sky Harbor Airport (see Maps 5.1 and 5.2).

The roots of modern Scottsdale extend to post-Civil War westward migration and the establishment of Fort McDowell to protect miners, ranchers and settlers in the newly formed Arizona Territory. Using remnants of ancient canals built by the native Hohokam tribe, the army



Source: ESRI, DeLorme, and Tele Atlas

Map 5.1 Arizona state map locating Scottsdale and the study site.

established irrigation to support homes, agriculture and commerce—a pursuit that dominates public works and development efforts still. As private entrepreneurs expanded irrigation, agriculture thrived in the otherwise arid Sonoran desert, focused around Phoenix. The Reverend Winfield Scott and his wife Helen visited Phoenix in 1888 and, taken with the possibilities of the area, filed a homestead claim for 640 acres east of the city. He preached the virtues of the area throughout the Territory, and attracted other settlers to the newly-forming community. Scott and a colleague laid out the village of Scotts Dale in 1894; basic civic amenities were established soon thereafter, including public schools.<sup>262</sup>

### ***Birth of a Destination City***

Today Scottsdale is known less for agriculture than for resorts and tourism. The first resort was established in 1909 with the slogan “where summer loves to linger and winter never comes.”<sup>263</sup> It and others that followed drew both wealthy and artistic classes to the area; their desires and spending, in turn, forged critical aspects of the local economy that persist today. When the city was incorporated in 1951, with a population of about 2,000 and an area of two square miles, the value of tourism and the arts was recognized and captured. Apartment housing for the part-time winter population was developed alongside the expanding arts and resort scene. By the mid-1950s, the Chamber of Commerce adopted the slogan “The West’s Most Western Town” and buildings in the downtown were given Old West-styled facades.<sup>264</sup> The real and imagined frontier heritage of Scottsdale continues to be a critical marketing strategy for the municipality.

The move to incorporate Scottsdale came right after World War II; military training installations established in the area during the war had introduced a new audience to its desirability. As is often the case, the high technology sector followed the military; Motorola established a plant south of Scottsdale in the mid-1950s, drawing a well-educated, skilled working class from the

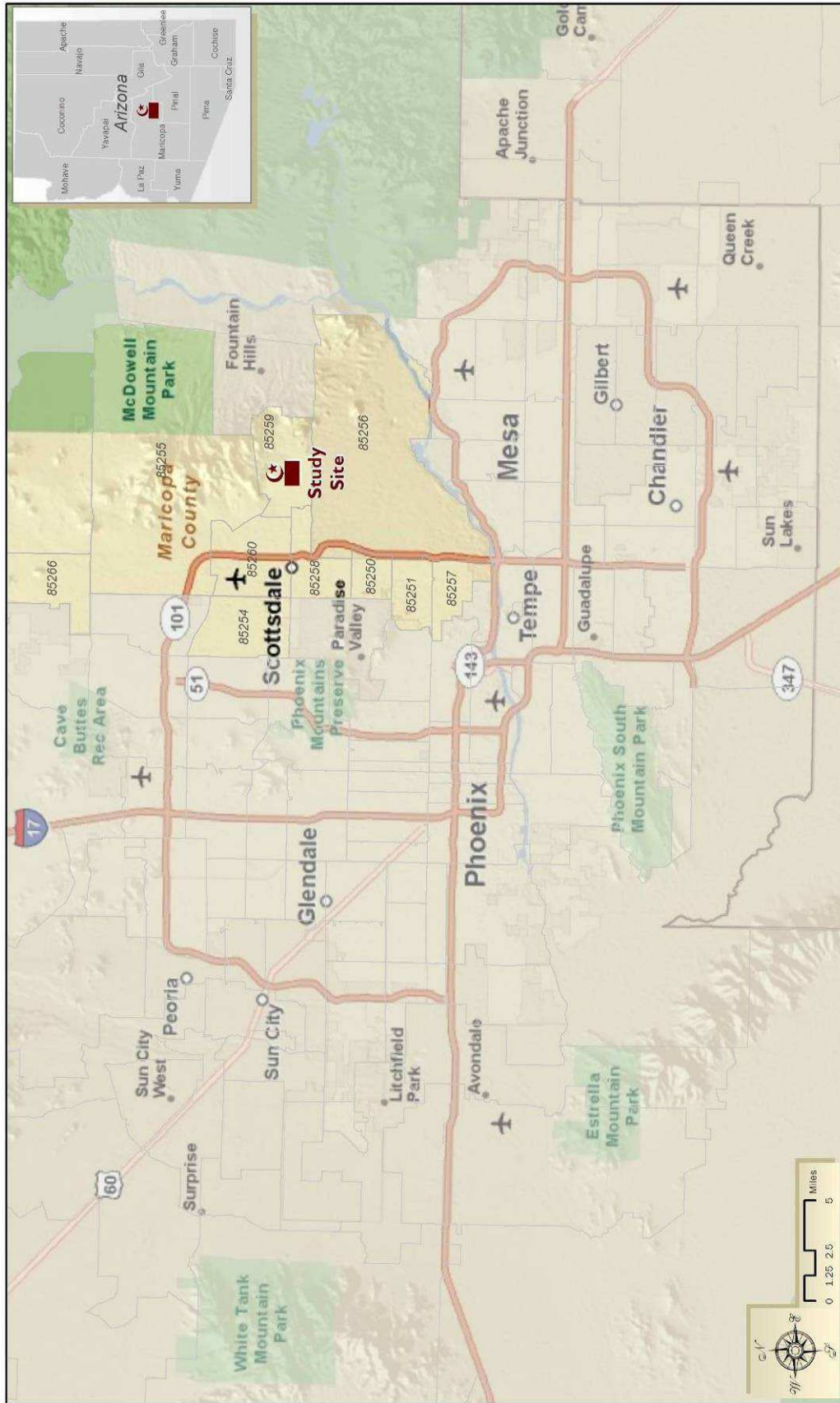
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<sup>262</sup> Jane Fudala. *Scottsdale*. Charleston, SC: Arcadia Publishing, 2007. Pages 9-13.

<sup>263</sup> *Ibid*, page 26.

<sup>264</sup> City of Scottsdale General Plan, 2001 Update. Introduction, page 25.





Source: ESRI, DeLorme, and Tele Atlas

Map 5.2 Regional map showing the City of Scottsdale in relation to surrounding municipalities.

upper Midwest. Arizona State University expanded into a major university around the same time, spawning a period of explosive population and housing growth in which Scottsdale grew from 10,000 residents to 65,000. It also was a period of rapid annexation by the city, adding 58 square miles north and south of the historic downtown between 1958 and 1965. Housing development occurred primarily in the south, and brought the first tract house neighborhoods to the city.<sup>265</sup>

### ***Planning for Growth: A Legacy of Citizen Participation***

Post-War booms and the rise of professional planning led cities all across the US to develop comprehensive plans for development; Scottsdale wrote its first in 1960 in collaboration with Maricopa County. Through the decade, the resort sector was encouraged and flourished, related high-end retail development expanded and a major business center grew around the municipal airport. Neighboring municipalities boomed as well, and Phoenix proposed annexations that would have surrounded Scottsdale. Population growth also drove county, state and federal plans for large-scale transportation and public works projects. Recognizing that these projects could be beneficial or detrimental, in 1966 the city launched the Scottsdale Town Enrichment Program (STEP) to engage private citizens, business interests and civic organizations in municipal problem solving and land use planning. Three hundred people participated.

STEP established a model for collaborative examination of both current and long-term planning challenges, and formed the backbone of public process for the 1975, 1981, and 1991 general plan updates. With its successor citizen participation vehicles, it formed a culture of participation that extends to numerous citizen committees, commissions and advisory boards for land use and other civic issues. As the 2001 General Plan Update notes, the city's history "has raised the

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<sup>265</sup> *Ibid*, pages 25-26.

level of expectation for citizen involvement to virtually a mandate."<sup>266</sup> As a result of this broad engagement, Scottsdale residents tend to be aware of General Plan elements, as well as land use ordinances and review processes. As will be discussed, participants in the Islamic Center review readily referred to the General Plan, environmental regulations, area plans and the zoning ordinance. One might speculate that one reason for this awareness results from Scottsdale's demographics. Well-educated, affluent retirees represent a not insignificant percentage of the population. They have a stake in maintaining the high values of the property in which they have invested their life savings, and they have the time, intellectual and financial resources to invest in civic participation.<sup>267</sup>

Broad participation has lead to general public support for Scottsdale's planning. The city has what might be termed a "culture of compliance." Individual property owners comply with an array of regulations which, to residents of other municipalities, might seem invasive or even a loss of property rights. These regulations range from the rules imposed by property owners' associations, to standard zoning and site plan regulations, to highly specific environmental ordinances. However, what was resoundingly clear in my research interviews is that property owners understand the role these regulations—and compliance with them—have in creating and maintaining Scottsdale's unique character. Although people may chafe at personal inconveniences of regulation, they do seem to broadly embrace the concept that the city's natural areas and built environment, as well as residents' attitudes toward them—are what define Scottsdale. Personal concessions for their protection, it seems, are both justifiable and well worth any sacrifice. This large-scale buy-in leads to high expectations among property owners that their peers will likewise comply, and creates a kind of peer pressure to meet neighborhood and municipal standards.

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<sup>266</sup> General Plan, 2001 Update. Introduction, page 30. Additionally, The Character and Design Element of the Plan notes: "Community oversight has been and continues to be an important part of our community's heritage, and one that did not occur by happenstance. Our community leaders have carefully scrutinized new development, redevelopment and related activity for decades." Page 41.

<sup>267</sup> This speculation is based on the anecdotal assessment of all interviewees in this case study.

### ***Thinking Big: Scottsdale's Northeast and Master Plan Communities***

The mid-Sixties STEP process well positioned Scottsdale to consider large-scale land use questions as part of the 1975 General Plan Update. Annexations had opened vast tracts of land in the far north of Old Scottsdale. The initiation of the Central Arizona Canal Project,<sup>268</sup> which would deliver water from the Colorado River across more than 325 miles of the state<sup>269</sup> and bisect the expanded city, as well as annexations beyond the canal path, focused developers' attention to Scottsdale's Northeast, the area in which ICNEV would be located nearly twenty years later (see Map 5.3). These blank slates of open spaces enabled the city and developers to meet the housing market. As was happening nationwide, tastes in Scottsdale were shifting away from dense, multi-purpose districts to land-consuming low density, limited use neighborhoods.

For the purposes of this case study, the most significant element of 1975 General Plan Update was a revision of the zoning ordinance to allow for master plan communities. Master planning allowed the city and developers to think big, considering infrastructure and neighborhoods in tandem and making possible the efficient provision of public services in use-segregated districts. Further, in the past infrastructure had been built with Maricopa County bonds, federal grants and local improvement districts. The zoning change required developer funding for infrastructure and amenities to support new master plan neighborhoods. This cost-burden shift would dramatically alter Scottsdale's housing market. Developers initially incurred dramatically higher real estate costs, then passed them along to home purchasers in sales prices, trending the market toward "upper-middle and high-end housing costs that still persist in the community." High housing costs and exclusivity, in turn, attracted buyers who are heavily invested in the maintenance of property value. Scottsdale's powerful and well-known property owners' associations (POAs, also known as homeowners' associations, HOAs) emerged in this era<sup>270</sup>.

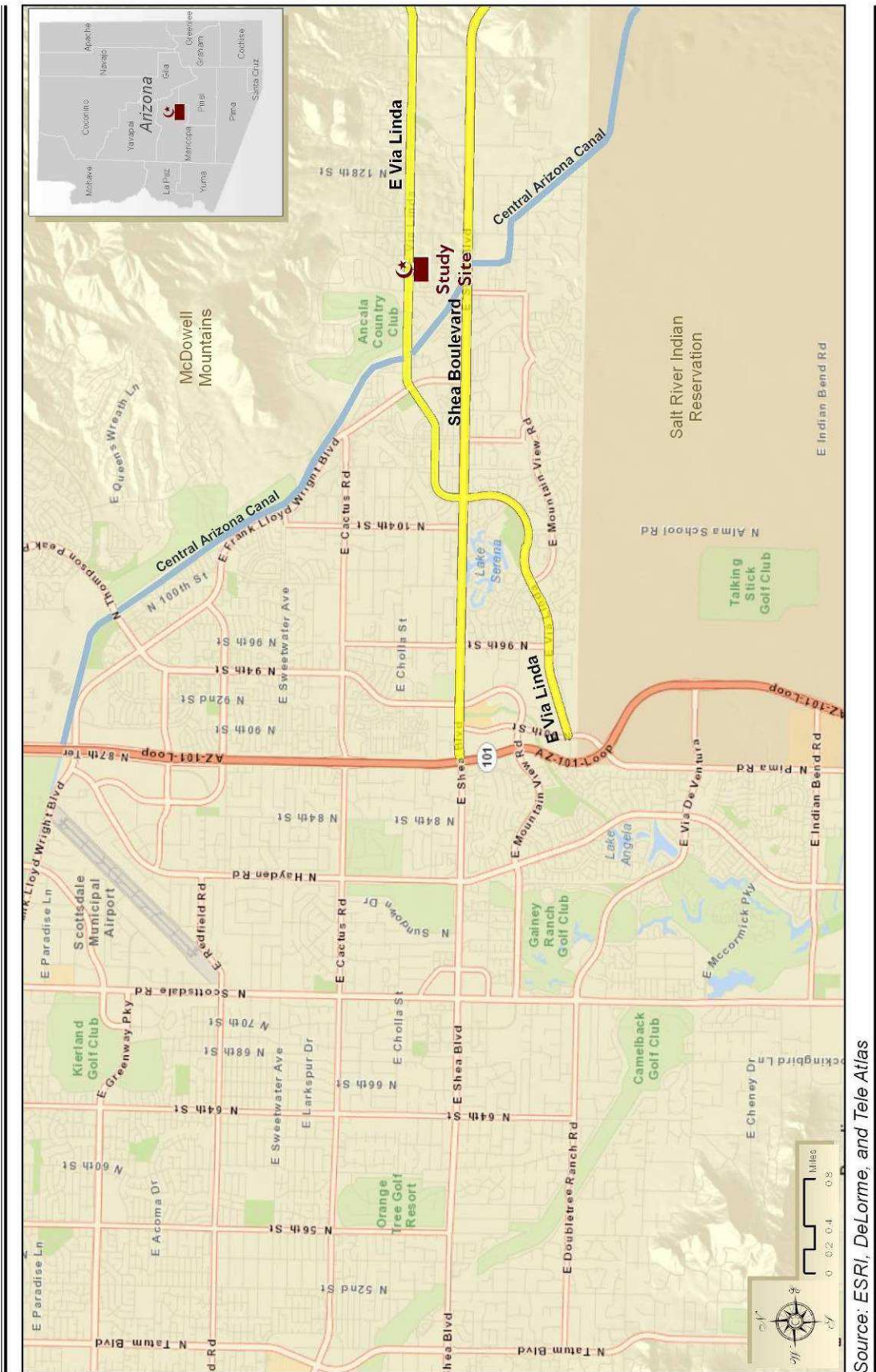
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<sup>268</sup> General Plan, 2001 Update. Introduction, pages 26-28.

<sup>269</sup> Website of the Central Arizona Project, <http://www.cap-az.com/AboutUs/FAQ.aspx>; accessed 3/5/2011.

<sup>270</sup> General Plan, 2001 Update. Introduction, page 26.





Source: ESRI, DeLorme, and Tele Atlas

Map 5.3. Partial map of Northeast Scottsdale, Arizona, locating ICNEV development site.

### ***The Role of POAs***

Planned community property owners associations are regulated by Arizona statute, which extends to them approval and oversight authority for new home construction and existing structural alterations within the development, as well as landscape design matters. A POA's requirements are recorded in restrictive agreements known as covenants, conditions and restrictions, referred to as CCRs. Buyers receive copies of the neighborhood's CCRs before purchase and agree to be bound to their terms. The CCRs constitute an enforceable contract between individual property owners and the association.<sup>271</sup>

A POA's covenants, conditions and restrictions can be more restrictive than local land use laws, but not less. They tend to be highly detailed, ranging from acceptable roof forms, window shapes and appropriate color palettes to minute items like the type of mailboxes or garbage cans that can be used. One might argue that POAs are quasi-regulatory agencies for their members. According to a Scottsdale developer interviewed for this research, the city looks favorably upon CCRs because they shift a significant share of land use and zoning enforcement from the city to property associations.<sup>272</sup> A land use attorney involved with the ICNEV review went so far as to refer to POAs as "the closest level of . . . government."<sup>273</sup>

The underpinning of this highly localized and highly specific regulatory structure is property values, and the belief that high standards for use and upkeep will protect both developers<sup>274</sup> and buyers' investments.<sup>275</sup> And, logically, individuals who prefer predictability and stability in their surroundings find assurance buying into a neighborhood in which all owners are held to

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<sup>271</sup> K. Michelle Lind, "Homeowner Associations and the Law in Arizona." Posted on the website of the Arizona Association of Realtors April 2000; reviewed December 2004. <http://www.aaronline.com/documents/webhoa.aspx>. Accessed 3/8/2011.

<sup>272</sup> Kenneth Bates, developer of Sendero Highlands, a small, gated neighborhood located adjacent to the ICNEV site on the south and west. Interview 6/1/2009.

<sup>273</sup> Alan J. Kaufman, Esq., attorney to a group of property owners that opposed the ICNEV proposal. Interview 6/2/2009.

<sup>274</sup> Mr. Bates reported that in planned communities, subdivision developers serve as the president of nascent POAs until a certain percentage of lots are sold and governing control can devolve to an owner-controlled association.

<sup>275</sup> Michael Bailey, neighborhood resident and POA. Interview 5/29/2011.

enforceable maintenance contracts. For developers looking to complete a project in a Scottsdale neighborhood governed by a property owners' association, the members' buy-in and consent is essential for securing municipal approval.<sup>276</sup> POAs, and especially alliances of multiple POAs, have tremendous influence on Scottsdale's long-range planning as well as current, project based planning. Additionally, they can function as political machines, engaging citizens in government function at an entry level, from which they rise to review board memberships and other appointed positions, and even candidacy for local and regional elected office.<sup>277</sup>

### ***Conservation Dawns***

As development burgeoned in Scottsdale's far north and northeast, two vital natural areas were endangered: remaining unspoiled terrain of the Sonoran Desert and the slopes and peaks of the surrounding McDowell Mountain Range. In addition to recognizing the ecological value of these areas, citizens of Scottsdale understood their economic value: people pay a premium to live and holiday in the splendor of desert views and would only continue to do so if they remained undefiled. In 1977, the city's Hillside Ordinance, an element of the zoning code, was passed to control development on the desert floor and to prohibit it on high mountain slopes. It quickly was challenged in the courts, spent several years in appeals, and was found unconstitutional by the Arizona Supreme Court. It would be reborn in 1991 as the Environmentally Sensitive Lands Ordinance (ESLO).<sup>278</sup>

With a policy update and border expansion in 2001,<sup>279</sup> ESLO protected 134 square miles of desert and mountain areas in the far north of Scottsdale and north and east of the Central Arizona Project Canal, including the study site. ESLO initially achieved its open space and

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<sup>276</sup> Bates, *op. cit.*

<sup>277</sup> Kurt A. Jones, AICP. Project Coordination Manager for the ICNEV review process. Interview 5/29/2009.

<sup>278</sup> General Plan, 2001 Update. Introduction, page 27.

<sup>279</sup> ESLO-1, Scottsdale Zoning Ordinance, Sections 6.1011-6.1091. Accessed via <http://www.scottsdaleaz.gov/codes/eslo/eslohistory>, 2/18/2011.

scenic mountaintop goals by requiring density transfers and clustering of large scale developments. In the 2001 update, open space requirements were extended to every parcel in the ESLO district, including single family homes. Based on a calculation that considers landform area and land slopes, all new developments must provide a Natural Area Open Space (NAOS) easement to the City of Scottsdale. The land must be preserved in its natural state (or restored to it) and remain free of obstruction so that plant and animal habitat is retained and natural washes are protected.<sup>280</sup> As will be discussed, ESLO compliance would be a strong theme in the development review for the Islamic Center of the Northeast Valley.

### ***Development Intensifies***

As the Hillside Ordinance was winding its way through the courts and the ESLO was being drafted, Scottsdale experienced its greatest period of growth since the 1950s. In keeping with the General Plan Update of 1981, the city doubled size through annexation by 1984, mostly in what would become the ESLO districts. Development within these new municipal bounds came fast and furious, adding 87,000 new citizens through the 1990s. Over the decade, they represented a nearly 5% increase in population and housing starts annually. Almost all of the new residential development was focused north of Shea Boulevard and east of the CAP Canal, in the neighborhoods surrounding the Islamic Center site. And, reflecting national housing trends, by 1999 80% of new housing was custom built. The city's planning department worked fast and furious to keep ahead of construction crews in the northeast, writing a number of area studies and plans in addition to the general plan update of 1991.<sup>281</sup> Despite the rapidity of the expansion, the city is reticent to refer to it as sprawl:

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<sup>280</sup> NAOS easements can be dedicated in common tracts within subdivisions and maintained by a homeowners' association or on an individual lot-by-lot basis. Sources: <http://www.scottsdaleaz.gov/codes/eslo/naos>, accessed 2/18/2010 and <http://www.scottsdaleaz.gov/Assets/Public+Website/bldgresources/Guide-NAOS.pdf>, accessed 3/11/2011.

<sup>281</sup> General Plan, 2001 Update. Introduction, pages 27-28. Land Use Element, page 74. Growth Areas Element, page 149.

Development that has occurred in Scottsdale cannot be defined, correctly, as 'sprawl.' 'Sprawl' is defined as 'unplanned, haphazard, uncontrolled, unserviced, disconnected development.' Development in Scottsdale has taken place exactly where it was planned according to the Land Use Element of the General Plan, first adopted in 1967 and periodically updated through today.<sup>282</sup>

Still, the pace of development in the 1990s is also referred to as "extreme" in that same general plan update. Further, the plan's proposed mitigations for future expansion make abundantly clear that the decade's growth took a toll on residents and neighborhoods. It may have been planned, but its impact was nonetheless perceived by the public to have been negative; this sentiment was similarly expressed by all case study participants. In response, the 2001 plan update recognized the need to evaluate the "tempo, style and nature of continuing urbanization and. . . the character of Scottsdale's neighborhoods."<sup>283</sup>

### ***An Aesthetic Vision: the 2001 General Plan Update***

The rapid pace of Scottsdale's development would be addressed almost by default as the city neared its planned build-out and took steps to preserve open space and scenic areas. Lacking available large parcels, the 2001 General Plan Update predicted that master plan communities like those around the mosque site would no longer dominate development as they had for the previous two decades. Instead, the update focused on smaller lot development and infill/redevelopment in existing neighborhoods.<sup>284</sup> But the scale of development is not the guiding theme of the plan—quality trumps quantity and size.

The citizen-driven City Shape 2020 visioning process leading up to the writing of the 2001 plan update identified the desire to imagine and plan Scottsdale as a "unified composition," successfully blending the diverse character of the city's neighborhoods, areas and overall community into a distinct and identifiable locale. The composition derives from the collective

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<sup>282</sup> General Plan, 2001 Update. Growth Areas Element, page 150.

<sup>283</sup> *Ibid*, page 149.

<sup>284</sup> General Plan, 2001 Update. Introduction, pages 36-37.

desire of a citizenry, steeped in the arts and cultural pursuits, to set and meet standards for "quality design," defined as "incorporat[ing] concepts, such as but not limited to context, aesthetics, craftsmanship, function, durability, and sustainability." The plan continues:

Good design is a result of sensitively responding to the character of the surrounding natural and built settings. . . well designed neighborhoods, distinctive shopping areas and businesses, recreational and cultural facilities and public structures combine to make a community that is attractive, desirable, and memorable. . . and contribute substantially to the community's potential as a recreational resort area and regional trade center.<sup>285</sup>

In a seeming nod to the potential subjectivity of aesthetics-based standards, the plan emphasized reliance on detailed area studies and strong, objective design guidelines, which were compiled in the master document "Sensitive Design Principles."<sup>286</sup> Basing a robust review process on such guidelines, the plan argues, "enrich[es] the lives of all Scottsdale residents and visitors by promoting safe, attractive and context compatible development."<sup>287</sup> The approach is comprehensive, placing design emphasis not only on the built environment, natural areas, and the blending of the two, but also on view sheds, landscaping, outdoor lighting and the aesthetic appeal of transportation corridors. The general plan update and its aesthetic underpinnings made their debut in the months leading up to the ICNEV development proposal and served as an important backdrop for public response.

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## PART II: SCOTTSDALE'S SHIFTING DEMOGRAPHICS

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The 1990s development boom also represented a demographic shift for Scottsdale. While the overall population of the city had grown steadily over the decades, reaching 202,705 full-time

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<sup>285</sup> General Plan, 2001 Update. Character and Design Element, pages 39-40.

<sup>286</sup> See: <http://www.scottsdaleaz.gov/planning/general/sensitivedesign>. Accessed 3/19/2011.

<sup>287</sup> General Plan 2001 Update. Character and Design Element, page 47.

residents by 2000, household size had shrunk from the post-World War II norm of four to five people down to 2.26. The city credits this drop to both the national decline in family size and the significant inflow of retirees to Scottsdale through the 1980s and 1990s;<sup>288</sup> in 2000, residents age 65 and older represented nearly 17% of the city's population.<sup>289</sup> Nearly all the interviewees in this research referred to the strong influence of this demographic on public process, and particularly land use issues. A planner commented that in general the retirees he has dealt with have a sense that, having succeeded in life sufficiently to afford retirement in Scottsdale, they are entitled to control their surroundings:

They think [for example]: "I live in Scottsdale. . . my kids are grown up and gone and therefore there should be no kids in my neighborhood. And so you see a lot of the gated communities up in [the northeast] that gate themselves off because they have this sort of feeling that the gate provides them this protection from the outside world [and they shouldn't be bothered by] the other community amenities that everybody else depends upon. . . we [planners] always make jokes that, you know, if it's a school, park or a church, all things that are great about communities, Scottsdale has a problem."<sup>290</sup>

As will be described, the interests of this demographic were considered an important factor in the resistance to the ICNEV development proposal.

Although Arizona's population, and indeed that of neighboring Phoenix, have a sizable contingent of Americans of Latino descent and immigrants from Latin American countries, Scottsdale is predominantly white. In the 2000 Census,<sup>291</sup> 92% of Scottsdale's population identified itself as white only, and 91% native born. This is also related to Scottsdale's status as a resort and retirement destination—most of the holiday seekers and retirees who relocate to

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<sup>288</sup> General Plan, 2001 Update. Introduction, pages 25 and 32

<sup>289</sup> 2000 Decennial Census, drawn from Social Explorer. Table SE:T10 Age (detailed version)

<sup>290</sup> Jones, *ibid*.

<sup>291</sup> Data for the City of Scottsdale in the 2000 Decennial Census were drawn from Social Explorer. Tables referenced: SE:T1 Population; SE: T9 Age (short version); SE:T14 Race; SE:T40 Educational Attainment for Population 25 Years and Over; SE:T85 Industry by Occupation for Employed Civilian Population 16 years and Over; SE:T93 Median Household Income in 1999; SE:T155 Housing Units; SE:T156 Tenure; SE:T163 Median Household Value for All Owner-Occupied Housing Units; SE:T201 Nativity by Citizenship Status; SE:T207 Place of Birth for the Foreign-Born Population.

the city are white and from the Mid West and North East.<sup>292</sup> Of the 9% of Scottsdale's residents who identified themselves as foreign born, just under half had naturalized. And nine percent of immigrants were counted as having been born in a predominantly Muslim country.<sup>293</sup>

Scottsdale boasted a well-educated populace in 2000: almost a third held at least a bachelor's degree, and another 15% had achieved advanced or professional degrees. The city's median household income of \$57,484 reflects its number of retirees; median house value of \$205,000. Nearly 70% of housing units were owner occupied. Reflecting the city's economic focus on resort culture and the arts, nearly a quarter of the population age 16 and over worked in the arts and entertainment/recreation as well as the retail trade. Another third worked in education and healthcare as well as professional and management services.

The census tract surrounding the mosque site was comparatively more affluent than Scottsdale city in the 2000 Census.<sup>294</sup> Median household income was \$103,254 and median housing unit value was a healthy \$359,000. Reflecting the Northeast's rapid growth in the 1990s, the median construction year for the 5,918 housing units in the area was 1997, and almost 85% were owner-occupied. Of the tract's 14,658 residents, 94% percent identified as white only, and almost 91% were native born. Of the 9% who reported being foreign born, almost half had naturalized; only 124 reported having been born in a predominantly Muslim country.<sup>295</sup> Besting the city again, almost 41% of tract residents held bachelor's degrees and another 20% an

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<sup>292</sup> Interviews: Jones, Bates, Bailey and Michael Steffens, resident of Northeast Scottsdale, 6/3/2009.

<sup>293</sup> One cannot conclude numbers of Muslims living Scottsdale from this data since the Census does not record respondents' religion. However, referring the number of individuals who reported nativity in predominantly Muslim nations is the closest estimate we can make of immigrant Muslims. The datum should be understood in this very limited sense. The predominantly Muslim nations identified as the "Place of birth for the Foreign-Born Population" in Census Table SE: T207 and having data points for Scottsdale in 2000 are Afghanistan, Bangladesh, India, Iran, Pakistan, Indonesia, Iraq, Jordan, Lebanon, Syria, Turkey and Egypt.

<sup>294</sup> Data for Census tract 2168.25 in the 2000 Decennial Census were drawn from Social Explorer. Tables Referenced: SE:T1 Population; SE: T9 Age (short version); SE:T14 Race; SE:T40 Educational Attainment for Population 25 Years and Over; SE:T85 Industry by Occupation for Employed Civilian Population 16 years and Over; SE:T93 Median Household Income in 1999; SE:T155 Housing Units; SE:T156 Tenure; SE:T160 Median Year Structure Built; SE:T163 Median Household Value for All Owner-Occupied Housing Units; SE:T201 Nativity by Citizenship Status; SE:T207 Place of Birth for the Foreign-Born Population.

<sup>295</sup> See footnote 25. The predominantly Muslim nations identified in Census Table SE:T207 as the "Place of birth for the Foreign-Born Population" and having data points for the tract in 2000 are India, Iraq, Jordan, Lebanon and Egypt.



advanced or professional degree. Nearly a third of the working population was employed in the broad occupation categories professional, scientific, and management or finance, insurance and real estate. Although we do not know exactly how many of the tract residents were retired, we can make an assumption based on the traditional retirement age of 65—6% were recorded at that age or above in the 2000 Census.

### ***Growing Faith Communities***

Although the US Census does not record data related to religious practice, local press coverage from the period just before the ICNEV proposal began to focus on growing religious diversity. The Arizona Republic ran a piece on national diversification trends and moves toward tolerance, making several references to the expansion of Islam in America.<sup>296</sup> Then, a little more than a year later, the growth of faith communities overall in the Scottsdale area was documented by the same paper. “Churches on the Rise, New Congregations Keep Pace with Population Growth,” (4/15/2001)<sup>297</sup> reported local expansion even among mainline Christian denominations that were flat or declining nationally. In stories normally told about immigrant and minority faith groups, the article details how mainstream Christian and Jewish congregations rented or purchased temporary spaces through Scottsdale’s population boom while they saved to buy land and construct purpose-built facilities. As congregations moved up, newer communities would quickly bought their buildings for their own use. One realtor who specialized in church properties reported that 25% of all his sales over two decades had occurred between 1999 and 2000: “I’ve got more buyers that I’ve ever got sellers. . . If I could find a builder who would go out and build spec churches, I know I could sell them faster than we could get them finished.” Seven of the Phoenix Area’s 23 Jewish congregations “moved into larger facilities or expanded on their current location” between 1993 and 2003. The region’s Muslim community was no

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<sup>296</sup> Maureen Jenkins. “In US a Growing Religious Diversity: Immigration Boosts Asian, Mideast Faiths,” *Arizona Republic*. Ideas Section, Page J3, 1/16/2000. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>297</sup> Kelly Ettenborough. “Churches on the Rise: New Congregations Keep Pace with Population Growth,” *Arizona Republic*. Front Section, Page A1, 4/15/2001. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

exception. In 1990, the Phoenix area had only two mosques, in Tempe and Chandler. The reporter documented nine formal Muslim communities in 2001 as well as four others meeting in homes or other temporary locations. The Scottsdale faith community was one of these.

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### **PART III: HISTORY OF THE SCOTTSDALE MUSLIM COMMUNITY<sup>298</sup>**

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When Naser Ahmad and his family arrived in Scottsdale in mid-1990s, they were among a handful of Muslim families in the city. They prayed mostly at home, but for fellowship on Fridays and high holidays, they traveled up to twenty miles to mosques in the neighboring cities of Phoenix, Tempe and Chandler. However, as Scottsdale rapidly expanded through the 1990s, more Muslims arrived to take advantage of the expanding economy and the quality of life the city had to offer. Mr. Ahmad and his wife, Arifa, began reaching out to other Muslims and exploring the possibility of establishing their own faith community. A local mosque, a neighborhood mosque, would mean that more families would be able to attend congregational prayers and participate in the social and educational activities that the commute made impractical.

Mr. Ahmad brought much community development experience to the table. He had established an Islamic Center on the Texas plains while living in that state, and had also served on mosque boards in Phoenix and Chandler.<sup>299</sup> It was vitally important to him that the congregation focus first on building its community, then on raising a structure. With a strong community, he felt, all else would follow. In 1998, he and a small group rented space in hotels near their homes for congregational prayers and Ramadan services. At first, fewer than ten people attended prayers,

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<sup>298</sup> Information in this section is drawn from interviews with former ICNEV President Naser Ahmad, 5/27/2009 and 6/3/2009 as well as founding board member Azra Hussain, 5/29/2009.

<sup>299</sup> The Scottsdale Muslim community included several individuals who had established mosques in other cities; this wealth of community development and real estate development served the new congregation well.

but as the word spread, the congregation quickly grew to about seventy families, with around twenty individuals regularly attending Friday prayers. Based on the promise of regular participation, the community booked a hotel social hall on Fridays for the following year. With locational stability, even more families joined the community. Imams from neighboring congregations, as well as men from within the community, led prayers and delivered the *khutbah*, or sermon, on rotation.

Following Mr. Ahmad's lead, the community set about organizing a governing structure for themselves. The process was characterized by an impressive commitment to democracy and consensus. For a period of six months, a group of roughly thirty people, men and women, met weekly to establish by-laws. Concepts were put forward, each participant given time to comment, and then an acceptance vote taken. Mr. Ahmad and the other founders I interviewed agreed that this egalitarian approach ensured buy-in and a sense of ownership in the community's success. Several outcomes of this process are notable among the case studies. The Scottsdale community's by-laws require that one board seat be reserved for a woman. Additionally include an "ethnicity clause" to prevent a single ethnic group from dominating the leadership and character of the community. The goal, Ahmad stated, is to allow the community to evolve into an American Muslim community, based in but not beholden to the cultural and ethnic origins of its founders.<sup>300</sup> Finally, the President is limited to two single-year terms, with time off before return to office, though he or she may serve on the board in the interim.<sup>301</sup> At the end of the nascent community's by-law deliberation process, its leaders stepped down and an election was held for a new board. Mr. Ahmad felt that this communicated a sense that this project belonged to no single party or group. However, in a vote of confidence in their leadership, most were elected to the new board, as well. The freshly crafted by-laws and

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<sup>300</sup> The congregation may vote into leadership anyone from any ethnic background, but no more than three members of the governing board may be from a single ethnic group. Should any two members have concerns that one ethnic group has taken a majority, they may object without stating any reason. Following a review sequence, the board members must step down to return balance to the body.

<sup>301</sup> The board's terms are not limited, because Ahmad felt it was easier to limit his own position rather than others'.

governance structure served as the basis for the community's application for 501(c)(3) not-for-profit charity status with the Internal Revenue Service. This would be essential for fundraising efforts for a land purchase and facility construction.

While writing the by-laws, participants also divided into subcommittees to tackle functional questions: establishing a location and curriculum for weekend Qur'an school, developing a youth ministry, assessing institutional space needs, and identifying a development site. As a starting point for location identification, an intersection near which a majority of members lived was selected, and a five-mile radius drawn around it—five miles seemed the most reasonable commuting distance to allow regular participation in daily and congregational prayers. Some members of the discussion group favored finding a small, affordable location which could be ready for occupancy quickly. Others argued that this was short-sighted given anticipated community growth and the social, educational and ministerial goals set in the strategic analysis. Long-term thinking won the day, and the group determined to identify a site that would accommodate both current needs and future growth. A land acquisition fund was built from gifts and pledges from local community members. Then, Mr. Ahmad's wife noticed an open lot on 122<sup>nd</sup> Street and Via Linda, near their own recently-built home, and she suggested he look into it.

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#### **PART IV: SITE & NEIGHBORHOOD BACKGROUND**

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The area in which the mosque site is located is commonly identified by the major regional transportation artery that passes through it—Shea Boulevard. Specifically, the site is within the bounds of the East Shea area, defined on the west by 112<sup>th</sup> Street, on the east by Scottsdale's municipal boundary, on the south by the Salt River Indian Reservation, and on the north by the

McDowell Mountains as they would be bisected by a continuance of Thunderbird Road (see Map 5.4).<sup>302</sup> It is also part of a significant scenic and commercial area known as the Shea Corridor, which runs along the Boulevard ¼ mile in each direction from Hayden Road to the city limit.<sup>303</sup> The area had been platted in the 1950s, but wasn't annexed by Scottsdale until the early 1980s. Several large development projects, begun in the late 1970s, focused the city's attention on East Shea because of feared impacts on its fragile desert ecosystem and the largely untouched McDowell Mountains. After annexation, unfinished projects were brought into compliance with the Environmentally Sensitive Lands Ordinance (ESLO, described in Part II) and all new development made subject to site plan and design review. This included the 1987 construction of a Scottsdale Mayo Clinic Campus at 136<sup>th</sup> Street. The city projected this renowned facility would draw similar biomedical uses and create an area-wide economic engine;<sup>304</sup> to accommodate it, a "Mayo Clinic Support District," composed of office, commercial and research uses was included in the 1991 General Plan Update.<sup>305</sup>

In addition to its environmental zoning, the East Shea area also had been designated a master plan district. City planners anticipated that when built out it would, along with to the Mayo Clinic, host a range of single-family neighborhoods and several high density multi-family residential developments; two elementary schools, a middle school and a high school; two neighborhood parks, a specialty park and a community park; several neighborhood retail centers. It was classified as a Desert Suburban Character District, calling for large-lot residential development as well as the preservation and protection of land forms, ecosystems and views.<sup>306</sup> Clearly, balancing such dramatic build-out with open space and environmental conversation would require careful planning. Between 1987 and 1994, four major area studies were conducted and

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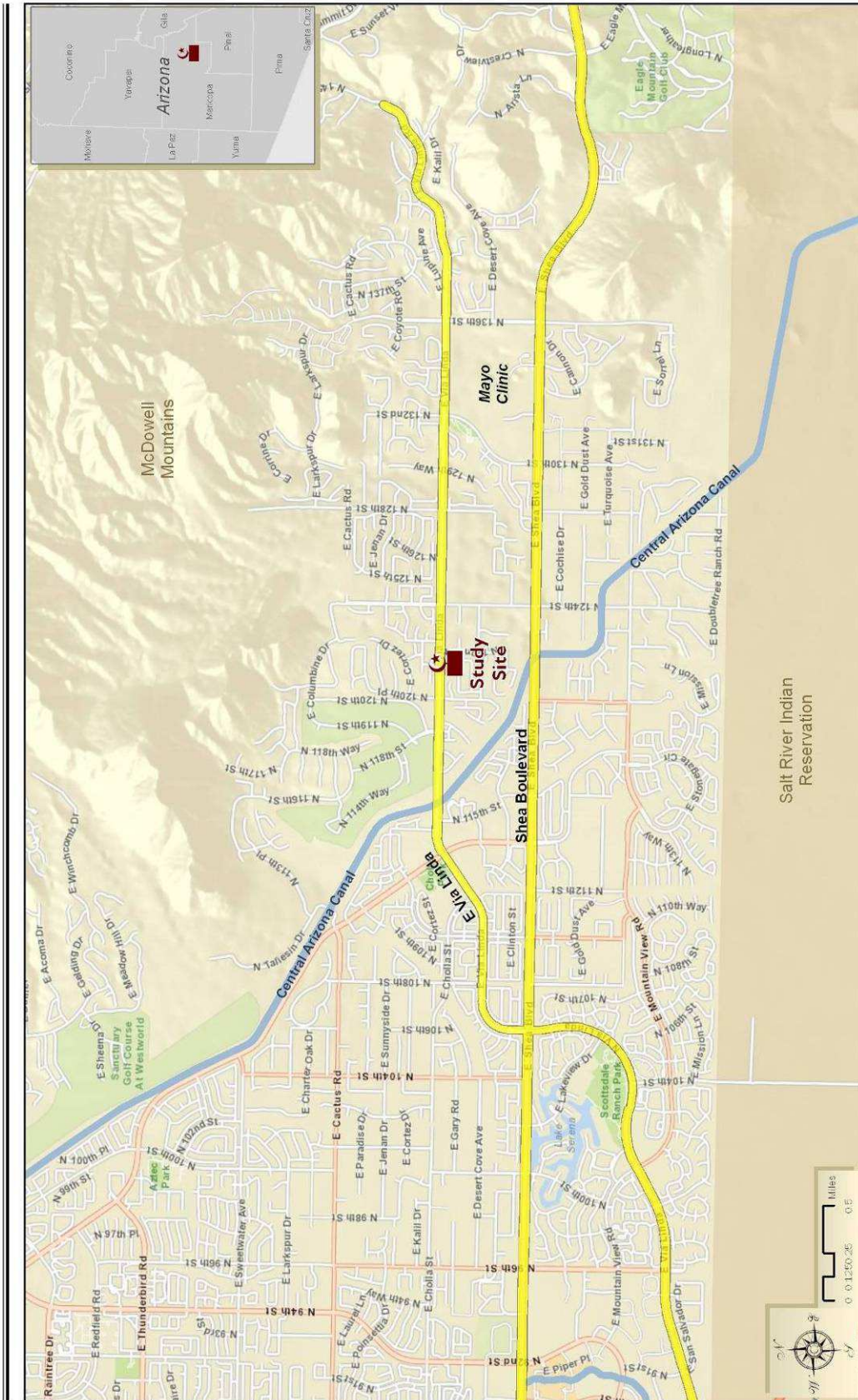
<sup>302</sup> East Shea Area Plan, adopted by Scottsdale City Council 6/1/1987. Online summary accessed 3/31/2011 via [http://www.scottsdaleaz.gov/planning/policycards/pc\\_eastshea](http://www.scottsdaleaz.gov/planning/policycards/pc_eastshea)

<sup>303</sup> Shea Area Plan, adopted by the Scottsdale City Council 6/15/1993. Online summary accessed 3/31/2011 via [http://www.scottsdaleaz.gov/planning/policycards/pc\\_shea\\_1801](http://www.scottsdaleaz.gov/planning/policycards/pc_shea_1801).

<sup>304</sup> General Plan, 2001 Update. Introduction, pages 26-27.

<sup>305</sup> East Shea Plan, *ibid*.

<sup>306</sup> East Shea Plan, *ibid*.



Source: ESRI, DeLorme, and Tele Atlas

Map 5.4 East Shea Area, Scottsdale, highlighting the location of the Mayo Clinic on 36<sup>th</sup> Street (between Via Linda and East Shea) in relation to the study site.

a number of design guidelines adopted for the Shea Area. All the while, development surged ahead. Between 1990 and 1994, 65% of Scottsdale's new residential development happened in East Shea—over 5,000 dwelling units.<sup>307</sup> Michael Bailey, an early resident who since 1994 has lived in two homes near what would be the mosque, remembered that period:

There were [no houses] here when I first got here, so it was rural. There was [just] desert, and my real estate agent told me I was nuts to want to live out here because there [was nothing but] rattle snakes and coyotes and javelinas. . . [There were] beautiful hiking trails, mountains of peace and quiet, the tranquility. There wasn't [sic] any traffic lights. So it was very laid back then. . . 122<sup>nd</sup> [Place] was a dirt road. . . [But then the construction went on] all the time. You'd wake up to the hammers and the sawing and, yeah, all the time for years. It just stopped in the last couple of years.<sup>308</sup>

Streetscape guidelines for the area's major transverse transportation arteries—Shea Boulevard and the parallel Via Linda—would contribute much to character development in fast-growing East Shea. Shea was zoned to develop as a commercial and retail corridor. Via Linda, which runs parallel to Shea from the Central Arizona Canal Project almost to 140<sup>th</sup> Street and on which the Islamic Center would be located, was envisioned as backbone for a residential district. As laid out in the area's master plan, it would host various supporting amenities including public schools and multi-family housing. Additionally, as constructed, Shea linked Scottsdale to the neighboring municipality of Fountain Hills, delivering commuters downtown and on to Phoenix. Although not yet completed, Via Linda was planned to be a second Fountain Hills link and was projected to carry an estimated 29,000 vehicles on weekdays by 2020.<sup>309</sup> The need to mitigate the impact of these roadways on residents, and to preserve the mountain and desert vistas along them, was deemed critical by the city. Both were named Scenic Corridors, requiring retention of open space beyond the public right of way.<sup>310</sup> Subsequent guidelines for each roadway dictated landscape concepts and planting plans; graphic symbols, entry monument

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<sup>307</sup> Via Linda Streetscape Guidelines (draft as of 6/14/1994), n.p. Accessed 3/16/2011 via [http://www.scottsdaleaz.gov/Assets/Public+Website/design/GLs\\_ViaLinda\\_06-14-94.pdf](http://www.scottsdaleaz.gov/Assets/Public+Website/design/GLs_ViaLinda_06-14-94.pdf).

<sup>308</sup> Bailey, 5/29/2009.

<sup>309</sup> Via Linda Streetscape Guidelines, *ibid*.

<sup>310</sup> Shea Boulevard Streetscape Guidelines, 1/26/1994, n.p. Accessed 3/16/2011 via [http://www.scottsdaleaz.gov/Assets/Public+Website/design/GLs\\_Shea\\_01-26-94.pdf](http://www.scottsdaleaz.gov/Assets/Public+Website/design/GLs_Shea_01-26-94.pdf)

concepts, gateway designs; wall, light pole and sidewalk design; and height and setback requirements for fronting buildings.

Still, as Mr. Bailey attests, East Shea's multi-layered regulatory environment did not deter developers. In retrospect, it is somewhat surprising that in the fury of mid-nineties construction the parcel at Via Linda and 122<sup>nd</sup> Street that would become the mosque site remained undeveloped. The area was originally zoned R1-43 ESL, a single family designation that would have allowed one residence per 43,000 square feet and required compliance with the Environmentally Sensitive Lands Ordinance. By 1999, most of the parcels around the parcel had been subdivided and upzoned to R1-18 and R1-10, allowing substantially greater housing density.<sup>311</sup> Most of the housing was arranged on gated cul-de-sacs and was developed corporately under the covenants, conditions and restrictions of property owners' associations. The case file reflects that the subject parcel consisted of two lots, each with a different owner,<sup>312</sup> totaling 6.5 acres.<sup>313</sup> "Churches and places of worship" were allowable as-of-right under the parcel's R1-43 ESL zoning, subject to review by the city's Development Review Board. A number of other non-residential uses were also permitted as-of-right, including adult care homes, day care facilities and public schools. Uses allowed by conditional use permit included community centers and recreation facilities, private and charter day schools, and even golf courses.<sup>314</sup>

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<sup>311</sup> Jones interview. The staff planner who stewarded the mosque proposal said that this style of ad hoc upzoning occurred frequently in the northeast late 90s. Not infrequently, higher densities were requested by groups of homeowners who banded together to form LLCs and acquire leftover lots like the ones on which the Islamic Center would be developed.

<sup>312</sup> City of Scottsdale Planning Department, electronic file 67-DR-2001 ICN-NEV (hereafter ICNEV File). Pre-Application Questionnaire, 6/30/1999.

<sup>313</sup> ICNEV File. Logan Simpson Design, Inc. Cultural Resources Survey for Lots 3 & 4 of the McDowell Acres Subdivision, September 2000.

<sup>314</sup> City of Scottsdale Zoning Ordinance--Ord. 455, Sec.5.100.—R1-43 Single-Family Residential District. Accessed 5/12/2009 via [http://library.municode.com/HTML/10075/level3/VOLII\\_APXBBAZOOOR\\_ARTVDIRE.html#VOLII\\_APXBBAZOOOR\\_ARTVDIRE\\_S5.100R1SIMIREDI](http://library.municode.com/HTML/10075/level3/VOLII_APXBBAZOOOR_ARTVDIRE.html#VOLII_APXBBAZOOOR_ARTVDIRE_S5.100R1SIMIREDI)



Scottsdale Muslim Community president Naser Ahmad agreed with his wife that the 122<sup>nd</sup> Street/Via Linda lots seemed promising as a development site for the Islamic Center. He approached the two owners by telephone, offering to purchase the land in a “seller carryback” arrangement. That is, he proposed that rather than giving them the full purchase price financed by a bank mortgage, he would make a substantial initial cash payment. Then, the sellers would hold the mortgage while it was paid off over a mutually determined period of time. This type of financing vehicle is not uncommon in real estate purchases made by Muslim communities. Islam considers interest and usury unacceptable, so the use of standard amortizing mortgages is not generally desirable or appropriate and therefore Muslim real estate buyers often seek creative alternatives. Alas, the parcel’s owners were not interested in this arrangement.

When after another six months the land still had not sold, Mr. Ahmad took a different approach. He had a real estate agent call the owners and say he had a buyer who wanted to negotiate face-to-face, not by written offer. This opened the door for the personal interaction Ahmad felt confident would convince the seller to meet his terms. He pitched the mutual benefit of a four-year seller carryback: for the seller, greatly reduced capital gains tax on four smaller, annual payments rather than one lump sum; for the buyer, avoiding a religiously unacceptable interest-accruing mortgage. The seller was convinced. Before a sales agreement drawn up, the sellers approached the City of Scottsdale’s Planning Department in late June 1999 to confirm that a mosque could be built on the site.<sup>316</sup> With that affirmation, the first payment was made from the Muslim community’s land acquisition fund and the balance solicited from local Muslim families over the period of the carryback.

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<sup>315</sup> Unless otherwise cited, the information in this section drawn from my interview with Naser Ahmad, 6/3/2009.

<sup>316</sup> ICNEV File. Pre-Application Questionnaire, 6/30/1999.

## **PART VI: INTERFACING WITH THE CITY OF SCOTTSDALE—PROACTIVE CONFLICT MANAGEMENT**

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As dictated by the zoning code for houses of worship in R1-43 districts, the design and site plan for the Islamic Center of the North East Valley would be reviewed by the Development Review Board, which had final permitting authority for the project:

The purpose of the Development Review Board is to maintain the quality of development in Scottsdale through review of architectural design and layout of proposed development plans for commercial development and preliminary plats for residential subdivisions. This includes site planning and the relationship of the development to the surrounding environment and the community. As specified in the Scottsdale City Code, the Development Review Board membership consists of a City Council member, a Planning Commission member, and five members of the public with professional experience in design, architectural and/or development.<sup>317</sup>

City Planner Kurt Jones was assigned to the Islamic Center review process from the first interaction with the parcel seller in June 1999. It was one of a steady stream of projects coming into his office, reflecting the pace of development in the East Shea area. Jones and his fellow project coordination managers necessarily were generalists, stewarding a range of project types. Jones, however, was deemed especially well-suited to managing a mosque development proposal—he had recently stewarded a proposal for a Catholic church through the DRB process. In his assessment, “[the church] was just as. . . conflictual as the mosque was.”<sup>318</sup> Importantly, that case also came through review after the passage of RLUIPA, giving Mr. Jones critical experience with the legislation and its requirements. Jones’s background helped the Muslim community anticipate likely sources of conflict: parking, traffic, lighting, noise. And perhaps even more critically, his familiarity with the neighborhood enabled him to help ICNEV’s leaders craft an outreach and negotiation strategy with surrounding property owners. Jones’s contribution to the mosque review process cannot be overstated.

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<sup>317</sup> City of Scottsdale website, Boards and Commissions page. Accessed 4/7/2011 at <http://www.scottsdaleaz.gov/boards/DRB>.

<sup>318</sup> Jones, 5/29/2009.

As described earlier in this chapter, Scottsdale is committed to maintaining a well-oiled planning machine and proactive conflict management. Even before submitting an application, property owners and developers meet with their assigned project coordinator to review required documentation, minimum public outreach, and likely steps in the public review process. Most critically, they discuss potential areas of conflict and work toward resolving them before an application ever reaches the public hearing stage. Such intensive collaboration is evident in the written record for the Islamic Center of the North East Valley. For a full year prior to public hearings, Jones and other planning and design staff reviewed architectural, site and landscape plans and provided detailed, actionable feedback both in written form and in face-to-face sessions with the applicant and the project's architect and engineer. Not all Scottsdale development proposals linger in the pre-hearing stages for so long a period. Mr. Ahmad availed himself of all the support and assistance that the city was willing to extend to the project, in hopes of (1) achieving cost efficiencies by planning and designing in compliance with codes and ordinances, and (2) escaping all avoidable neighborhood conflict. It was a learning experience for Mr. Ahmad and his community; developers experienced with Scottsdale's codes and process frequently move through the pre-public review phase more quickly.

### ***Site Plan, Occupancy, Parking***

The city planning department's standard detailed submission auditing and clear communication with applicants ensured that Mr. Ahmad and his colleagues avoided a range of pitfalls that commonly mar Islamic Center proposals. Their structure and their site plan were designed to meet defined height and square footage envelopes and therefore avoided any need for zoning variances. They met the vegetative and open space requirements of standing environmental zoning overlays, as well as the requirements of streetscape guidelines, requiring no related variances. The question of the seatless prayer hall's occupancy, and therefore the facility's parking requirements, was addressed as matter-of-factly as it would be for any other public space. Without the intense scrutiny of a public audience, the architect could calmly and

rationality explain how the circulation and seating in the prayer hall would function. Jones simply asked him to calculate the number of fixed seats that could fit within the open prayer hall, and then base a parking calculation on the formula laid out in the parking ordinance for analogous uses.<sup>319</sup> The question of user traffic patterns was similarly addressed in this “quiet” review phase, reducing potential for later confusion related to it; Mr. Jones was even invited by the architect to observe prayers at another regional mosque to bolster his understanding.<sup>320</sup>

With the help of Mr. Jones, Mr. Ahmad had positioned his community as optimally as he could. Careful site selection ensured that the question of use was off the table. Overall code compliance and major use and site plan kinks were worked out of the proposal before being broadly presented to the public. This is not to suggest that these larger issues would not be addressed by the public; they certainly were, but from a legal standpoint, the Muslim community had met the majority of its requirements in advance of the public hearing phase. The only element outside of zoning restrictions was the proposal to build a dome over the prayer hall at a height of 35 feet, five feet beyond the allowable limit. What remained as legitimate topics under the board’s purview were nearly all subjective matters—the sufficiency of vegetative and other screening, the effectiveness of planned traffic control measures, the complex’s site orientation in relation to the neighborhood as well as its architectural and decorative programs. Subjectivity provides ample opportunity for conflict.

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<sup>319</sup> City of Scottsdale Parking Ordinance, Section 9.102 F. Interpreting Requirements for Analogous Uses, Nos. 1-4. Referenced in fax from Jones to ICNEV architect Sal Ramel, 5/22/2001. ICNEV File.

<sup>320</sup> Ramel, letter to Jones, 7/20/2001. ICNEV File.

## PART VII: RECOMMENDED ADVANCE OUTREACH AND EARLY OPPOSITION

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In 2000, advance outreach to homeowner's associations was not required by the City of Scottsdale but was strongly encouraged.<sup>321</sup> Planning staff recommended that the Muslim community present its development plan to NESPOA—The North East Scottsdale Property Owners Association. NESPOA is a coalition of more than twenty homeowner's associations in Scottsdale's North East which advocates on behalf of its members and their neighborhoods on development issues. Founded in 1986, NESPOA was a strong voice in long-range planning and development proposals throughout the building rush of the 1990s and gained significant stature in the period.<sup>322</sup> NESPOA's nod of approval is understood to be necessary by developers working in the area,<sup>323</sup> and city planners encourage applicants to meet with its board well in advance of finalizing plans for review.<sup>324</sup> Its influence and impact is evident when one examines its agendas—they read very much like a planning or zoning board agenda and are covered by the local press in the same manner that municipal boards are covered. Mr. Ahmad and his colleague, Dr. M. Zuhdi Jasser,<sup>325</sup> presented to NESPOA on behalf of ICNEV in July 2000—one month after their initial contact with the city and sixteen months before the mosque's first public hearing was scheduled. The board meeting would amount to the project's public debut.

Coverage of Mr. Ahmad's and Dr. Jasser's presentation by the *Arizona Republic*<sup>326</sup> detailed important aspects of their plans: the phasing of the project (first, a social hall that would act as a temporary prayer hall; second an actual prayer hall for up to 250 people, including a dome and

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<sup>321</sup> The 2001 General Plan update made outreach to POAs a requirement, as well as the holding of independent meetings with neighborhood residents. Jones interview.

<sup>322</sup> "North East Scottsdale Property Owners Association: a Twenty Year History (1986-2006)" Found on the NESPOA website, [www.nespoa.org](http://www.nespoa.org). Accessed 5/25/2009.

<sup>323</sup> Bates interview.

<sup>324</sup> Ahmad, Bates and Jones interviews.

<sup>325</sup> Dr. Jasser is an internist in the Scottsdale area who has grown to national prominence as the founder of the American Islamic Forum for Democracy (<http://www.aifdemocracy.org/>) and a commentator for the Fox News network on issues of radicalization among the American Muslim community. At the time of the Scottsdale development, the AIFD was nascent and Dr. Jasser did not have the national profile he has now.

<sup>326</sup> Heather L. Goebel. "Group Proposes Plans for Mosque," *Arizona Republic*. Scottsdale/Foothills Community Section, Page 9, 7/22/2000. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

minaret; and third a weekend school for children, like Sunday school). Critically, the article noted that “both men stressed the community’s willingness to cooperate with neighbors’ sensitivities regarding lighting, height, landscaping and color palette. Jasser said there would be no audible call to worship.” And, addressing the hot-button issues of parking and traffic right from the beginning, clear statements were made that parking for 148-150 cars was proposed, and that traffic generation would be greatest on Fridays between 1pm and 2pm. According the article, NESPOA’s board “liked the plan,” and made specific recommendations based on it, including the importance of considering of neighborhood color schemes, modeling exterior lighting on the directional type used at the nearby Mayo Clinic’s, and not using a site enclosure wall. It was also noted that the Ventana Foothills homeowner’s association, located adjacent to the mosque site on the south, “welcomed the Islamic Community and its building plans.” Mr. Ahmad recalled that the NESPOA board had a sophisticated understanding of the Muslim community’s development rights at the site, and realized that their energy would be best spent on helping ensure an attractive design that would be compatible with surrounding residential structures. The NESPOA president offered to write a letter of support for the project, but as happens in volunteer-based organizations, Mr. Ahmad got busy with other aspects of the project and didn’t follow up. He later regretted this oversight, when, as neighborhood opposition mounted, NESPOA quietly withdrew its support for the project. That is, NESPOA never actively opposed the project, it simply never repeated its support in any public way.<sup>327</sup>

### ***Early Opposition, Negotiation and a Proposed Land Swap***

Following that July 2000 meeting, the NESPOA board sent an update on ongoing development projects to their individual members and HOAs. Attention was drawn to the mosque proposal and neighborhood residents began to monitor it. A small group began to organize opposition, focused around the compatibility of the use with a residential neighborhood. Certainly, bias against Muslims could have been a contributing factor to this early opposition, but it would have

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<sup>327</sup> Ahmad interview.

been more general than the fear-based resistance mosques are experiencing now—9/11 wasn't even imagined in July 2000.

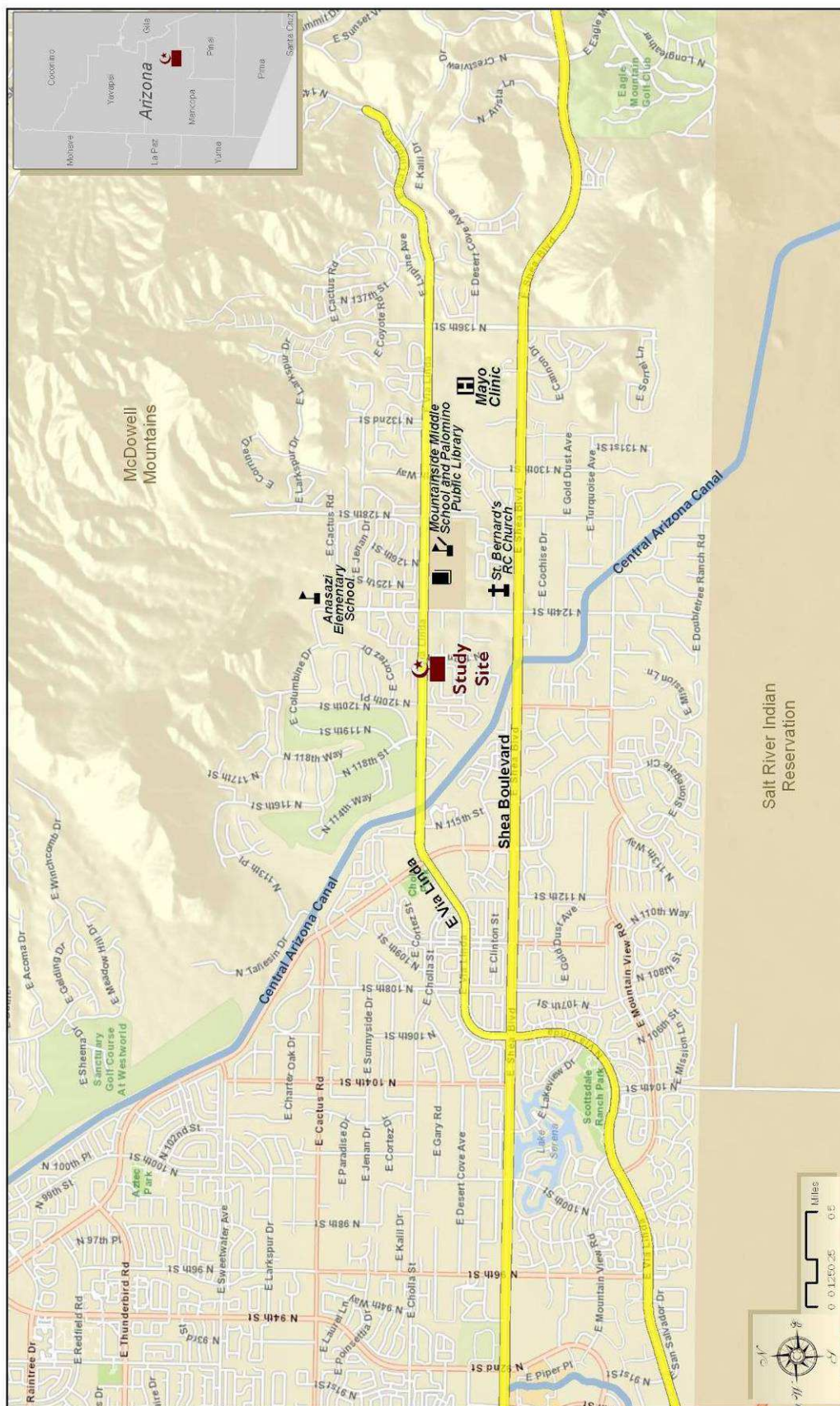
A number of neighbors reportedly were surprised that any use other than single-family homes would be allowed in the area, and believed the scope and scale of the project was too large. On some level this is surprising, given the presence of a charter school, middle school and massive high school with playing fields only a few blocks east of the mosque site, as well as a sizable Catholic Church on 124<sup>th</sup> Street, just off Via Linda (see Map 5.5).

None of the early opponents were willing to talk with me but most of the study participants repeated the assertion that residents were largely unaware of allowable uses under the zoning code. Resident interviewees suggested that subdivision developers as well as real estate agents reinforced the notion that single family housing was the only allowable use in the area. Correspondence between Mr. Ahmad and a concerned resident reflect this: "You should be aware that your plan has caught some residents off-guard in that Coventry Homes [the developer] in their Via Verano [a subdivision to the south of the mosque site] written material stated that the land north of Via Verano would be luxury homes."<sup>328</sup> However, the developer who did participate in my study found this assertion difficult to believe:

In Arizona the process to subdivide a property includes the publication of a public report. It's a long, expensive process where I have to put together a pamphlet that's half an inch thick and it says how far you are from an airport, how far you are from schools, churches, railroads, nuclear waste sites, how available water, electricity, cable, gas is. What the zoning is that surrounds you and what could happen with that. What we don't do as developers or as a state entity or governmental entity is to go in there and say "but [zoning boards] could go and change this." I think that a certain amount of common sense needs to come forth when you buy a piece of property and it says oh it's zoned residential here's a public report. It doesn't mean somebody can't go and change the zoning. It happens all the time and that's why then it goes to the city. And the city posts signs up and everybody gives input. But when it comes to the church it's a little different. It's not really a zoning change, it's a use permit. They're saying hey it's already zoned to

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<sup>328</sup> Letter from Andrew W. Richardson to Naser Ahmad, dated 12/12/2000. ICNEV file.



*Map 5.5 Development site for the Islamic Center of the North East Valley, shown in relation to uses extant at the time of the design review application.*



be a church here. So I guess what one could do, or what the state could do is say this is what the zoning is but by the way you know zoning changes could take effect.<sup>329</sup>

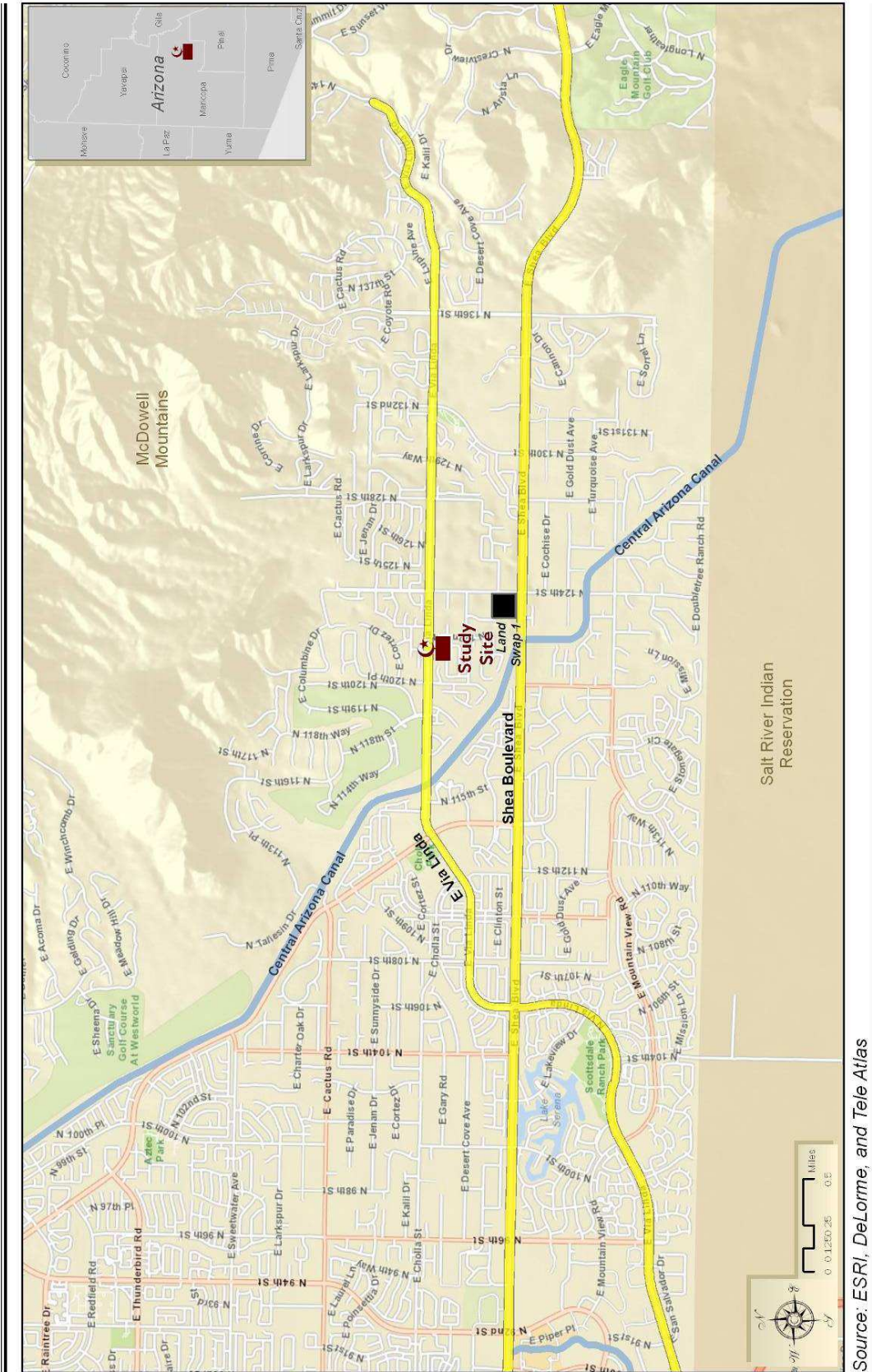
A small group of residents approached NESPOA in the pre-hearing phase regarding options to stop or relocate the mosque.<sup>330</sup> The NESPOA board, experienced in zoning matters and familiar with allowable uses in the neighborhood, took the position that the mosque was an allowable use and it was a waste of energy to attempt to stop it. Instead, they recommended that the neighborhood work with the applicant and the city to ensure the design's compatibility with the neighborhood and to limit the facility's impact. An unidentified party to this conversation suggested approaching a neighborhood resident who owned nearby property at 124<sup>th</sup> Street near Shea Boulevard to attempt a land swap (see Map 5.6). The owner was amenable, and in late 2000 delegates pitched the idea to Mr. Ahmad. Correspondence between A. Richardson, a resident whose home would be directly behind the mosque to the south and Mr. Ahmad reflects the degree to which the group familiarized themselves with applicable city codes and guidelines; reference is made to the General Plan's Land Use Element, City Shape 2020, streetscape guidelines for Via Linda and Shea Boulevards, and ESLO and NAOS standards. The implication of the letter is that residents shared concerns that ICNEV would not comply with applicable codes; it cites specific concerns about the height and massing of the structure, setbacks and open space issues, as well as light, noise, parking impacts. It directly states that a better location for the mosque would be on 124<sup>th</sup> Street in the commercial corridor along Shea Boulevard. The letter is openly copied to the mayor, planning staff, and NESPOA, among others.<sup>331</sup>

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<sup>329</sup> Bates interview.

<sup>330</sup> Neither NESPOA or the residents involved in this effort were willing to speak with me, so I was not able to confirm the details directly with them. The information provided here is drawn from my interviews with Ahmad, Jasser and Jones. Additionally, the time at which the land swap proposal surfaced is unclear.

<sup>331</sup> Richardson letter to Ahmad, 12/12/2000.



Source: ESRI, DeLorme, and Tele Atlas

Map 5.6 Location of first land swap proposal in relation to the ICNEV development site.

In response,<sup>332</sup> Mr. Ahmad assured Mr. Richardson that “where compliance of [sic] city codes is concerned, you can rest assured that the city is doing a very thorough job.” Without closing the door on the land swap, he expressed some reservations:

While I said [in our phone conversation about the similar property along 124<sup>th</sup> Street between Vial Linda and Shea] that we would be willing to listen to any suggestions and ideas, we must all be aware that we have expended considerable time and resources on this property and cannot place the project on hold. If you have any suggestions, we need to hear them as soon as possible.

Still, if a land swap made for a happier neighborhood, ICNEV was open. Mr. Ahmad noted that in conversations with Mr. Richardson and others he and his colleagues took the position that:

I said. . .as long as there’s no money coming out of our pocket we will be more than happy to consider because whether it’s here or there was not a big deal. And if it makes it nicer for everyone we don’t care. . .And we got fairly detailed. . .we even had a letter of intent put in and I had a lot of meetings with the [other parcel’s owner, an LLC]. . .we would swap. We would take the [124<sup>th</sup> Street/Shea parcel] which was a bigger property, they would take [the 122<sup>nd</sup> Street/Via Linda parcel] and in return NESPOA and the homeowner’s associations would help them with the city to get a little bit more density. . . the density was one [house per acre]. It would mean they could have three homes. But if the density went based on the [already upzoned subdivisions] around [the site] then [they] could double that. . .So [NESPOA] would help them [achieve] greater value [on the 122<sup>nd</sup> Street/Via Linda] parcel.

On many levels this would have been an ideal solution. The mosque would have been located in an area perceived to be more appropriate for houses of worship, and the community would have had more residential neighbors. Word spread among home owners that the land swap was viable. Still, Mr. Ahmad and his colleagues proceeded with the city’s review of their plans for the 122<sup>nd</sup> Street parcel and continued their advance outreach to surrounding property owners, meeting one on one and in small groups sessions (in keeping with planner Kurt Jones’s recommendations for enhanced outreach).

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<sup>332</sup> Ahmad letter to A. Richardson, dated 1/30/2001. ICNEV file.

### ***The Game-Changer***

Mr. Ahmad's correspondence relating to the land swap also hints at the communication challenges that would vex the Muslim community's attempts at advance neighborhood outreach and proactive conflict management:

In addition to working with the city, we have been proactive in asking for input from the surrounding neighborhoods. Toward this end, we had contacted the offices of NESPOA and arranged for a presentation of our project. . . a very small number showed up for the presentation. . . we were asked to present the project a second time in August 2000. This was specifically for members of Via Verano HOA. While we did comply with the request, no one from Via Verano HOA attended the presentation. . . if you or [the other] residents of Via Verano have other concerns, we would be happy to present the project once again and listen to your concerns, ideas and suggestions.

And then came the attacks of September 11<sup>th</sup>, 2001—ICNEV would no longer have difficulties drawing attention to its proposal.

The first public hearing before the Development Review Board was scheduled for October 4<sup>th</sup>, 2001. Staff notes in the ICNEV file reflect that as mandated by code, public notices were sent and a hearing notice posted at the development site on Friday, September 14<sup>th</sup>. The notices and sign listed the project as “a place of worship and cultural center,” in keeping with the wording used by ICNEV on its review application.<sup>333</sup> Over the weekend, the sign was defaced with the word “Islamic,” and was replaced the following Tuesday. By Wednesday, ten calls from concerned residents had been received by the planning staff and a councilwoman called with questions on behalf of residents who had contacted her. Then, an undated, unattributed flyer, probably sent that same week or soon after, was distributed in the community, requesting response:

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<sup>333</sup> Unlike the Savannah case, where “house of worship” is used for religious land use proposals generically as a matter of ordinance, in the Scottsdale case, the language was used because it was submitted as such by the applicant. In what appears to be an attempt to stall the process by claiming that neighbors didn't understand what the project title meant, a member of the public stated in the delayed 11/1/2001 continued hearing: “. . . the way it is worded a lot of people would not understand what is being requested. . . the wording of the agenda should be clearer in the future. . . neighbors are disappointed about the lack of notification to the public.” Comments of Larry Grobman, Minutes, page 8.

Arizona's largest mosque is being proposed to be built at 122<sup>nd</sup> Street and Via Linda. The complex, with community center, school, gift shop, living quarters and dome, would be more than 131,000 square feet. This would have an adverse impact on our community, To voice your opposition to the proposed mosque. . .please write, as soon as possible, to: [staff contact information provided]. Please attend the development review board meeting, to voice your opposition to the mosque complex! [meeting details given].<sup>334</sup>

Between September 26<sup>th</sup> and October 4<sup>th</sup>, correspondence was received from 16 households opposing the project and two parties supporting (including the sellers of the parcels). Most seem to have been generated by the flyer--all but one contain the same misspelling of planner Kurt Jones's name; several quote directly from the flyer. Others seem to be the result of organizing in the Sendero Highlands subdivision, which abuts the development sit to the south and west and was home to at least one of the parties to the land swap negotiations (see Map 5.7). Their letters refer to the same long-range planning documents and subdivision review materials to which Mr. Richardson had referred in his early correspondence regarding the potential site trade.<sup>335</sup> Several other parties referred directly to the 124<sup>th</sup> street parcel in their letters. The most frequently expressed concern relates to the compatibility of the use and its density in a large-lot, upscale residential district; only two of these writers seemed aware that a house of worship was allowable as of right.<sup>336</sup> The design compatibility of the mosque, particularly its color scheme, was paramount for a number of correspondents:

Our concerns are only with the appearance of the mosque and it's [sic] unsightly minarets [sic] and bright colors.<sup>337</sup>

Traffic was also a chief concern, particularly the mosque's likely exacerbation of existing problems presented along Via Linda by the three public schools and the Mayo Clinic. The

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<sup>334</sup> ICNEV file.

<sup>335</sup> Senderos Highland letters: Chuck and Darlyne Holley, 9/24/2001 and Roger Fitness/Terri Stanley, 9/23/2001.

<sup>336</sup> Holley letter 9/24/2001; and Letter from Mr. & Mrs. Mark McMeans, received 10/4/2001.: "And yes, we do realize the residential zoning for some reason allows for the possibility of religious structures but they truly are commercial all the same." ICNV file.

<sup>337</sup> Letter from Michael and Shirley Myer, 9/26/2001. ICNV file.





Source: ESRI, Scottsdaleaz.gov and 2006 USGS Aerial

Map 5.7 Map showing subdivisions around ICNEV development site. The aerial image was taken after the development proposal (2006) and therefore does not represent the density extant during the ICNEV public review process. The map is intended as a reference only.



classic land use complaint regarding likely devaluation of property was also lodged.

Surprisingly, the proximity to 9/11 produced few written expressions of fear or overt bias, though planning staff and the Development Review Board chair reported having received strongly-worded telephone calls expressing such concern. From correspondence:

Before moving to Arizona, I worked in a Chicago suburb (Bridgeview, IL) for three years that saw an influx of Muslim residents in the mid-1990s. As they bought more homes their properties quickly fell into disrepair. Simple maintenance—including cutting the grass—was not done. The suburb's appearance suffered greatly, as did property values. Lower housing costs attracted more Muslim residents and the downward cycle repeated itself. . . I know it's not politically correct to make such statements but that does not make the facts any less true.<sup>338</sup>

Then there is the issue of 'safety.' In light of the tragic event [sic] on September 11<sup>th</sup>, people are concerned that bringing a mosque to this area would only jeopardize the safety and well being of our now *peaceful* [emphasis in the original] neighborhood. Check the recent news and you will learn about the areas that contain mosques, and how they've been targeted with undue violence.<sup>339</sup>

. . . given what has happened at the World Trade Center and the Pentagon on September 11<sup>th</sup>, and the very real potential for terrorist actions anywhere, anytime, it is inconceivable to us that the decision-makers in Scottsdale are even considering this proposal. We are so strongly opposed to this that we will actively participate in a recall campaign against any person in support of this mosque.<sup>340</sup>

Given such comments, the city attorney, DRB chair and staff, in consultation with Mr. Ahmad, felt that the hearing was too close to 9/11; they feared negative public reaction might derail the review and determined to delay by one month. And, given expressed frustrations about public outreach despite the Muslim community's efforts beyond requirements, city officials advised the Mr. Ahmad to use the extra time to ramp up outreach efforts, particularly with opponents. Said planner Kurt Jones:

And that's just not singling out the mosque. . . that's done a lot in Scottsdale for any use that has controversy. Yeah, this one [had]. . . bias to it, [and] from that angle [we said]. .

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<sup>338</sup> Letter from Michael Steffens, 10/4/2001. ICNEV file. This property is several subdivisions away from the mosque site, and significantly upgrade from Via Linda.

<sup>339</sup> Letter from Darla and Simon Ghanat, 9/24/2001. ICNEV file.

<sup>340</sup> Letter from Richard and Margaret Dennis, 10/3/2001. ICNEV file.

.see if you can work things out because it's such a . . . unique kind of use and so hot right now.<sup>341</sup>

The mayor also added her weight in a behind-the-scenes effort, according to Dr. Jasser:

Mayor [Mary] Manross, who [sic] I knew well, pulled me aside, you know, confidentially. . . and said 'you guys need to do everything you can to meet with as many neighbors as you can. . . enlarge it [beyond the legal bounds for notification] to whatever you can, just meet with them.'<sup>342</sup>

The advice was taken by the mosque's leadership, and during the continuance period held individual and small group meetings with some community members.<sup>343</sup> The buzz in the neighborhood reached the press, and the night before the hearing an article entitled "Neighbors Fight Mosque Facility, Area Incompatible, Residents Say" ran in the *Arizona Republic*.<sup>344</sup> A quote from Larry Grobman reiterated the misunderstanding about allowable uses: "[he] says people bought there with the belief that the land was zoned only for single-family residences." Residents felt that "a religious facility would not be a good fit in their neighborhood," and that they'd "rather see new homes built" on the lot. The article also expressed resident concerns that the mosque as proposed did not meet standing ordinances for open space and other requirements. Importantly, the paper noted that a house of worship was an allowable use in a residential zone, and gave an opportunity for Naser Ahmad to restate his community's intention to make the projects as compatible as possible, and a community resource:

Since September 11<sup>th</sup>, Americans' knowledge of Islam has come either from the fanatics who committed the attacks or from the media, Ahmad said. The facility also will serve as a resource center for those wishing to learn about Islam. 'That has been the intention from Day 1,' he said. 'The facility is going to be open for anyone to come in.'<sup>345</sup>

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<sup>341</sup> Jones interview.

<sup>342</sup> Jasser interview.

<sup>343</sup> Interviews: Ahmad, Hussain, Jasser.

<sup>344</sup> Diana Balazs. "Neighbors Fight Mosque Facility, Area Incompatible, Residents Say," *Arizona Republic*. Northeast Phoenix Community Section, Page 1, 10/31/2001. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>345</sup> *Ibid*.



Still, the controversy around the mosque roiled. A petition was circulated and submitted by proponents of the 124<sup>th</sup>/Shea land swap deal, garnering 205 signatures.<sup>346</sup> A number of additional letters and calls were also received by the planning department and other city officials, reflecting the land use themes already described; several expressed fear-based concerns. One particular letter may suggest the growing anxiety in the neighborhood. One couple who in advance of the rescheduled hearing date had submitted a letter focused solely on potential property value losses,<sup>347</sup> submitted a second appeal three weeks later:

**We are writing again to voice our strong objection to the proposed Mosque site** [emphasis in the original]. This site is practically located in our backyard and we have serious concerns that should be addressed by our City Council Representatives. Will the practice or influence of the Wahhabi sect of Muslim belief be allowed? Will this Mosque become similar to the infamous Finsbury Park Mosque in London, where hatred and radical idealism is allowed to be openly practiced? If there is any uncertainty to the answer of these questions, this Development Committee has the obligation to the citizens of Scottsdale not to allow the project to move forward. . . What of the large sleeping quarters? Is this for the Mosque staff or will it serve as accommodations for sponsored transplants from the middle east?<sup>348</sup>

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## PART VIII: THE FIRST PUBLIC HEARING

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The continued Design Review Board hearing for ICNEV took place on 1 November 2001. Design review board members were given “extensive preparation”<sup>349</sup> for the case by the City Attorney’s office. The chair reported that training was given in “behind-closed-doors” sessions, reminding members that places of worship were allowed in any residential neighborhood as of right and that only design issues could be debated and voted upon.<sup>350</sup> A deputy city attorney’s

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<sup>346</sup> The petition pages were sent from a fax belonging to party who had discussed the swap with Mr. Ahmad. ICNEV file.

<sup>347</sup> Letter from Matthew and Jennifer Johnson, 9/27/2001. ICNEV file.

<sup>348</sup> Letter from Matthew and Jennifer Johnson, 10/26/2001.

<sup>349</sup> There were different chairs for ICNEV’s two DRB sessions. City Council Member Robert Pettycrew chaired the first and City Council Member Cynthia Lukas the second. Ms. Lukas participated in this research and provided written response to interview questions, 3/14/2011.

<sup>350</sup> Ms. Lukas did not recall particular reference to RLUIPA, but her recollections did capture the spirit of the act, suggesting that it had shaped the attorney’s guidance.

staff, present at all review board meetings as a matter of standard practice, began the agenda item with a strong statement of issues of purview, as paraphrased in the meeting minutes:

Ms. Bronski stated in light of some information staff has received on this case prior to the hearing she felt it would be a good time to remind everyone what is within the Development Review Board's purview. The Board has the authority to discuss the site plan architectural issues [sic]. Some people have questioned whether this plan is in an appropriate location for a church and that question has already been decided within the limits of the ordinance so that issue is not before the board today. There have been many concerns raised that this case may add additional traffic; that decision has already been made and is not before the Board today. Some other calls have been received and in light of the recent events that the Nation is going in through there may be some temptation to make comments on a particular nationality or religion and that is not appropriate. She would urge everyone to stay on track and address all the comments to the site plan and architectural issues.<sup>351</sup>

The sentiment was reiterated by the chair when public comment was opened.<sup>352</sup>

Also as standard practice, the lead planner on an application, in this case Kurt Jones, presented the proposal to the board in the public session and responded to questions from board members. The written staff report from which he spoke, which recommends approval with stipulations, reflects several important elements. First, critically, that subdivisions surrounding the development site had already been upzoned to accommodate greater density, and that all of the residential designations in the neighborhood could lawfully be used for places of worship so long as zoning ordinance criteria were met. Second, that existing landform designations and standing ordinances limited the type of materials and colors that were be proposed for the application. Third, that water flows from a desert wash near the site, which had been an issue of concern for surrounding residential developments, had been improved with the construction of a channel system north and west of the site and therefore were not at issue in the mosque application. The phasing of the mosque's construction was detailed, along with intended uses. Mr. Jones made clear that the three buildings planned for a school complex were not part of the

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<sup>351</sup> 11/1/2001 DRB minutes, page 6.

<sup>352</sup> 11/1/2001 DRB minutes, page 7.

current application and that ICNEV would have to return to the DRB for their approval. Finally, he clarified that the mosque's minaret "meets the height allowances allotted for religious facilities, which specifically state that up to 10% of the roof area may exceed the 30-foot height requirement subject to Development Review Board review and approval."<sup>353</sup>

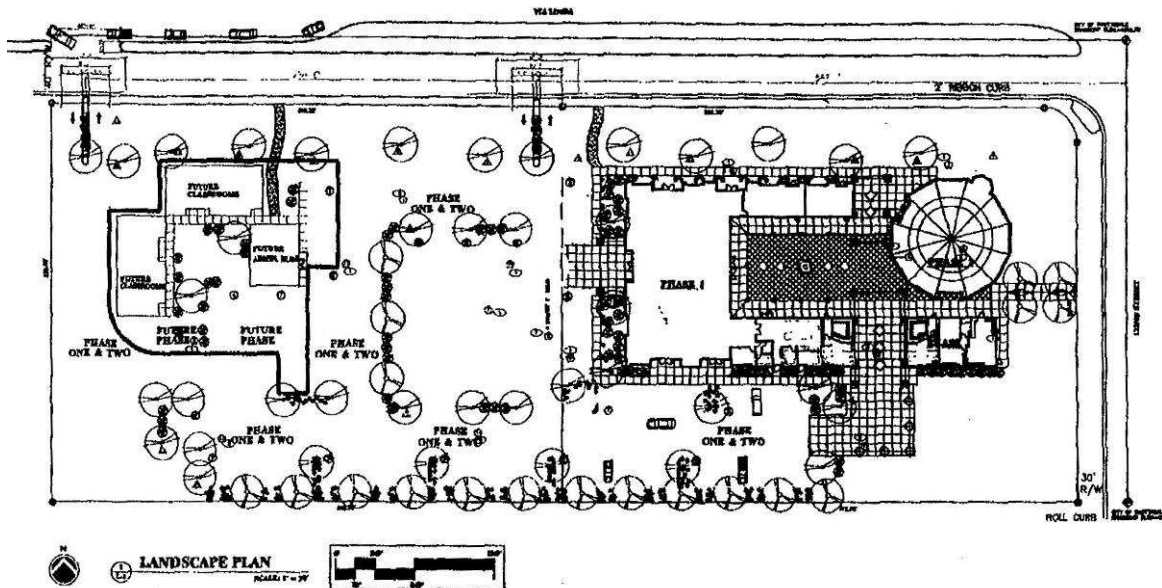


Figure 5.1 Early site plan/landscape design submission for ICNEV proposal showing planned phases for development. On right: phase one social hall and ancillary uses in the U-shaped structure and a free-standing imam's quarters; phase two octagonal prayer hall and minaret. On left: "future phase" classrooms.

The minutes reflect that initial board discussion of the application was limited, presumably to allow sufficient time for public comment. At least 45 members of the public attended the session,<sup>354</sup> an impressive number given that it was held on a Thursday afternoon at 1pm. Several letters submitted in advance of the meeting express frustration at the timing of the meeting, and one speaker said "many people who wanted to attend this meeting were not able to. . .because the meetings were held during the day."<sup>355</sup> Five individuals, including a Jewish Rabbi and a Christian minister, spoke in favor of the mosque, and twelve individuals spoke

<sup>353</sup> Written staff request for approval of ICNEV site plan and elevations, submitted to DRB 11/1/2001. ICNEV file.

<sup>354</sup> This number is based on filed speaker cards. I cannot be sure of the exact number of people who attended the meeting, but interviewees' accounts were consistent in their assessment of a large crowd.

<sup>355</sup> Comments of Larry Grobman, 11/1/2001 DRB minutes, page 8.

against. An attorney claiming to represent over 400 neighbors, Alan Kaufmann, also spoke for an extended period, having had time ceded to him by a ten attendees. Some interviewees expressed skepticism of the number of people Mr. Kaufmann represented and whether they were actually neighborhood residents. I had the impression that a sizable portion of them actually lived in neighborhoods beyond those that would have been within the legal limits for notification for the case. When I asked Mr. Kaufmann who and how many he represented, he deflected by saying that information was attorney-client privilege. He argued that the phase three classroom buildings--which according to the application and the testimony of the Muslim community were intended for the equivalent of Sunday school—constituted a private school and would require a use permit. The DRB, he reasoned, should not review the balance of the project until the zoning board approved the permit.

Individual speakers continued to focus on the design and land use issues that had already been expressed in the written comment; particularly traffic and design compatibility with the neighborhood. The density of development on the site was a source of scrutiny in terms of harmony with the balance of open space on surrounding parcels; several raised concerns that the mosque project did not meet Natural Areas Open Space requirements, despite staff assurances. Two, including the president of a homeowners' association that abutted the site to the south and west, claimed not to have been contacted regarding the project. In other statements, the influence of the parties advocating for a land swap is clear. A number of speakers parroted language related to the project's potential violations of city codes and design guidelines from the December 2000 letter to Mr. Ahmad. Two speakers made specific reference to the desirability of moving the mosque to 124<sup>th</sup> Street and Shea, one indicating that "everyone [approached to sign the submitted petition, around 200 people] wants this mosque in a different location."<sup>356</sup> Although the minutes do not record any statements of fear or bias, one speaker,

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<sup>356</sup> Comments of Larry Grobman. Approved minutes, Scottsdale Development Review Board Meeting, 11/1/2001. Page 8. ICNEV file.

whose home abutted the parcel to the west, did call the proposed project “offensive.”<sup>357</sup> It is possible that fear and/or bias-based comments purposefully weren’t recorded in the minutes, but I have not been able to confirm that possibility. It seems likely that the sophisticated and educated audience understood the matter of board purview, as is reflected in this email correspondence:

The above is a short list of strictly design related objections. Although I have other objections to this project, I have heard from staff that little can be done to address those other concerns. The concerns listed above deal strictly with matters which are within the purview of the [Development Review] Board and which are susceptible to [design review] Board review regardless of the fact that the facility is a house of worship.<sup>358</sup>

But the project planner and former DRB chair indicated that blatant statements were made not in public session but in private meetings and by voicemail and email:

I think a lot of these people hid behind the voice mail, behind the email, sent their cronies down that didn't mind speaking in front of the board. And there were a lot of people that showed up at the hearing that [sic] just sat there. And so they just didn't have the guts to stand up and say what they really felt knowing that it was probably not part of what we're there for.<sup>359</sup>

Upon closing the public comment, the chair allowed the Muslim community to respond. Although Mr. Ahmad had made opening comments, the spokesman for the community from that point forward would be Dr. Jasser, a respected, politically active local physician. When asked how the community decided who would speak, Mr. Ahmad responded:

I'll just be straight upfront and honest with you. We [knew] that in the public hearing it would be better for us to have someone who is born and raised over here. Because perception-wise [if an immigrant spoke] it's easier for people to say 'these are foreigners, I object.' So that's how we brought Zuhdi (Jasser) in. . .[he speaks with an American accent], he was in the military, and he was born [in America], just like my children. . .this is their home, there is nothing else.<sup>360</sup>

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<sup>357</sup> Comments of Charles Holley. 11/1/2001 DRB minutes, page 10.

<sup>358</sup> Email from Martin W. Saltzman, 10/31/2001. ICNEV file.

<sup>359</sup> Jones interview.

<sup>360</sup> Ahmad interview.

Dr. Jasser reiterated the idea that the Muslim community was “wedded to working with the community and would address all of their issues. . .[and was] not sure where communication fell apart.” He was clear that ICNEV would meet or exceed ordinance requirements and work to make the design fit into the neighborhood. Sensing the neighborhood’s discomfort with the later-phase school buildings, he confirmed that the Muslim community was not planning a parochial school but a Sunday school as is typical in “every church. . .as part of educating the community and the children.” Hinting at a concession, he said that the faith community would be willing to contain the classrooms within the other proposed structures at the east end of the site. Addressing the design review board, the minutes note that Jasser reminded them that their job was to apply “the fairness test whether to approve or disapprove the facility based on whether it meets the City’s ordinance.”<sup>361</sup>

The DRB discussion that followed public comment seems to indicate hesitancy on the part of board members that their opening comments did not reflect, demonstrating the influence of speakers. Three had site plan and traffic flow concerns, four mentioned the height of the overall structure or the dome specifically and its dissonance with the “residential scale” of the neighborhood. Buffering and open space were issues for three, even though the proposal as submitted met ordinance standards. The most subjective assessments of the plan seemed to center around the question of proposed colors and the degree to which they were a “departure” from those extant on residential structures in the neighborhood.”<sup>362</sup>

The largest concern among DRB members, however, seemed to be quelling neighbors. Three of the six members pointed to a need for more “work” with the neighbors toward mutually agreeable solutions to design and other issues. This is clearly a reflection of the participatory culture of public planning in Scottsdale, and the institutional desire for community-based conflict

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<sup>361</sup> Approved minutes, Scottsdale Development Review Board Meeting, 11/1/2001. Page 11. ICNEV file.

<sup>362</sup> Comments of Anne Gale, design member of the DRB. Minutes, 11/1/2001, page 7. ICNEV file.

resolution. As the chair was paraphrased: "Work needs to be done with the neighbors so this is a win-win situation for all of the property owners in the surrounding area. He added that he felt a 60-day continuance would be appropriate to allow all of the issues to be addressed."<sup>363</sup> It is unclear from the written record exactly what the review board expected in terms of additional outreach. My interviews with Muslim community representatives and neighbors also reflect the amorphous quality of the mandate. The Muslim community felt they had already met their legal requirements. Many neighbors seemed to expect personal outreach on the part of ICNEV. Differing expectations and unclear guidance on requirements would prove to be sources of conflict in the next round of the review.

The only evidence in the written record and in interviews of possible bias against the mosque development on the part of a review board member came in the somewhat veiled comments by one:

She stated that under the laws and codes the building of this mosque is clearly allowed. However, as a wife, mother and business woman she has learned the wisest way to deal with life is simply. Many, many times she has wanted to do something good, something that was important but the timing was wrong. She had to put the project aside and wait for better prospects. This mosque may be the victim of the same problem. As this particular time construction of this mosque might invite noisy demonstrations into a quiet neighborhood. All the letters in the packet were respectful. She wonders if it might be wisest to sideline this project for better prospects when we can all circle together as a family and move forward.<sup>364</sup>

In his response to the member, Zuhdi Jasser said that delaying "would be the wrong lesson to teach the city's children."<sup>365</sup> He recalled stating that "there's no better time to build the mosque. . . there's not better time to show what American values are all about." He felt that the Muslim

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<sup>363</sup> 11/1/2001 DRB Minutes, page 13.

<sup>364</sup> Gale comments, DRB minutes, 11/1/2001, page 13.

<sup>365</sup> Lesley Wright. "Mosque Plans Stir Debate, Congregation in Emotional Flap," *Arizona Republic*. Northeast Phoenix Community Section, Page 1, 11/7/2001. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

community needed to be able to address such fear-based sentiments head on, and that they had succeeded in doing so.<sup>366</sup>

In the end, the board voted unanimously to continue the case to the January 10, 2002 Design Review Board Meeting.

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## **PART IX: INTER-MEETING COMMUNITY ORGANIZING AND OUTREACH**

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### ***Immediate Concessions by Muslim Community***

Minutes of a Development Review Board workshop session held two weeks after the first public hearing demonstrate that the Muslim community and their architect went to work immediately to address concerns expressed by board members and the public in the first session. In part, their eagerness to make necessary changes was driven by the coming of Ramadan on the 17<sup>th</sup> of November and lasting until the 17<sup>th</sup> of December. Evening Iftaars, the ceremonial breaking of the daily fast, as well as other frequent events would curtail the available time that members, who were of course volunteering their time for the development and review effort, had to spend actively engaging in planning and outreach activities. As will be described, this would limit their ability to meet neighbors' expectation for outreach and interaction.

The immediate plan modifications included:<sup>367</sup>

- removing the religious education classroom portion of the proposal, but reserving the space for a future application;
- removing one of two driveways in favor of a single, larger ingress and egress point;
- altering the parking configuration and building placement to achieve greater setbacks;
- adding more trees in the NAOS areas for enhanced screening;

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<sup>366</sup> Jasser interview. A paraphrasing of his comment is also recorded in the minutes of the 11/1/2001 meeting, page 13.

<sup>367</sup> Staff report to update DRB members on application progress, DRB workshop session, 11/15/2001. ICNEV file.



- [illegible]

The Muslim community opted not to change to design aspects which they deemed important to the function and identity of their structures. Rather than lowering the height of the habitable structures or the dome and minaret, they approached the staff about an “opportunity of [sic] cutting into the site a few more feet to lower the buildings overall.”<sup>368</sup> This would reduce the complex’s impact on the scenic mountain and city light vistas that surrounding property owners were rightfully afraid to lose. The architect also did not alter the architectural style of the structures to a more “residential” appearance as was suggested in the 11/1/2001 hearing. It was important to the Muslim community that their structure be identifiable for its purpose—that the symbolic aspects of the architecture, particularly the dome and minaret, stand as physical testaments to the faith community within. To bolster their position, mosque representatives<sup>369</sup>

<sup>369</sup> Assumption was a visual reference common to almost all interviewees and used to illustrate both sides of the design coin—a well assimilated example of representative religious architecture, and a blazing example of disharmonious design in an otherwise consistent build landscape.

used as a comparative example the tiered rooflines and copper-topped domes of Assumption Greek Orthodox Church on East Cactus Road near 83<sup>rd</sup> Street (~4 miles away). Although distinctly southwestern in character because of its material palette, Assumption is also recognizably symbolic of the faith practiced within. Its tiers and domes stylistically link the Scottsdale faith community to the worldwide Greek Orthodox family. ICNEV's architecture, argued its leaders, should do the same for Scottsdale's Muslim community.

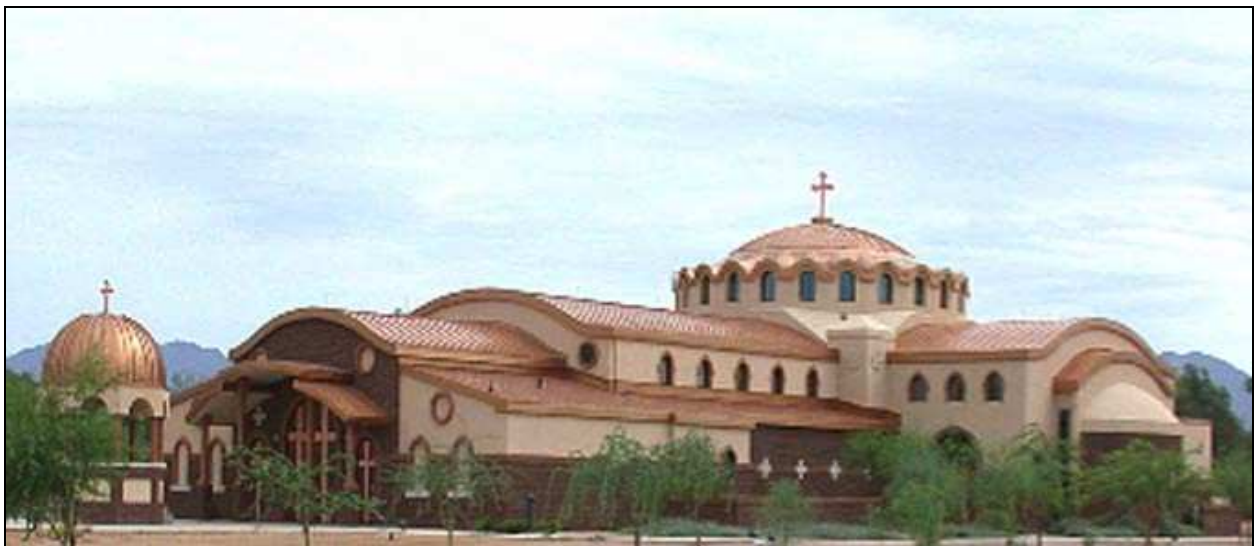


Figure 5.3 Assumption Greek Orthodox Church, 8202 East Cactus Road, Scottsdale; reprinted with permission.<sup>370</sup>

### ***An Interfaith Intervention***

Reverend David Hodgson, pastor of the Congregational Church of the Valley, United Church of Christ located near the mosque site On Shea Boulevard near 122<sup>nd</sup> Street contacted the Muslim community after 9/11:

. . .when [that tragedy] happened, I realized that I didn't have any Muslim friends, so went to meet with the Scottsdale Muslim community. I was concerned that they had real reason to fear political confrontation at the time, and I wanted them to know they weren't alone.

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<sup>370</sup> Source: Website of Assumption Greek Orthodox Church—<http://www.assumptionaz.org/about/383>

He saw the mosque review process as “one more moment to call the community to awareness that we are a pluralistic society. . . we have become something other than a Christian nation.” He offered organizing assistance, drawing on a long history of political and social activism as well as interfaith initiatives.<sup>371</sup>

Reverend Hodgson is a compelling leadership hybrid—he has served simultaneously as a church pastor and mayor of the small city of Absecon, New Jersey (1973-1976). He says that he has spent equal time behind the pulpit and in the political sphere and feels comfortable in both worlds. While he is clear that he has never used his clergy position to promote political positions, he admits that he has led congregations into engagement with social justice issues, which are by their nature political. When the ICNEV community came under attack, he saw the conflict as a political challenge: “I’ve been known to use my Christian righteous indignation to kick some backside.” His boldness made him a controversial character in the ICNEV saga. He reported receiving threatening calls for his support of the project; two callers in particular told him he should “back off” and that he had “no idea what [he] was up against.” He was undeterred. As a mayor, Rev. Hodgson undertook the development of Absecon’s master plan and updating the city’s zoning and building codes. He reported feeling very knowledgeable about and comfortable with the public planning process. This municipal experience, combined with his strong sense of moral purpose, served as sources of strength and vision for ICNEV.

After expanded public outreach was mandated in the first DRB hearing, Hodgson proposed a public reception to “dispel fears about the project and the Muslim community.”<sup>372</sup> He built a coalition of faith leaders to co-host the event: a Jewish rabbi, an Episcopal minister, a Roman

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<sup>371</sup> Except where otherwise indicated, information in this section is drawn from my interview with Reverend David Hodgson, 5/28/2009.

<sup>372</sup> Diana Balazs. “Scottsdale Churches Back Mosque Plan; Christian Pastors to Host Reception,” *Arizona Republic*. Valley and State Section, Page B8, 12/18/2001. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

Catholic priest, the Executive Director of the Arizona Ecumenical Council and the President of the Interfaith Action Coalition of Arizona. In an invitation sent neighborhood homeowner's associations, Rev. Hodgson wrote:

In response to the Scottsdale Development Review Board meeting of November 1, 2001, the religious leaders of our community have come together for the purpose of leading the community into the experience of multiculturalism and religious pluralism that the Islamic community promises to provide.

We are inviting our respective congregations and the neighborhood to a public meeting in the sanctuary of St. Bernard of Clairvaux in December 18, 2001 at 7 o'clock pm. The purpose of the meeting will be to give the IC-NEV an opportunity to share their dream of building a mosque and Islamic Center on their property at 122<sup>nd</sup> Street and Via Linda, and to provide a welcoming and inclusive environment in which questions may be raised to promote mutual understanding.<sup>373</sup>

Less subtly, the Catholic priest Fr. Bob Voss, was quoted in a newspaper announcement of the session: "We're smelling something, and it stinks."<sup>374</sup>

The concepts of education and tolerance training shaped the format of the meeting. The pastors shared readings from sacred Hebrew and Christian texts and recited the Qur'an and Fr. Bob described the shared Abrahamic tradition of the faiths.<sup>375</sup> Some of the approximately 400 attendees got up and walked out "when the purpose of the meeting was made clear."<sup>376</sup> Zuhdi Jasser spoke on behalf of the Islamic Center, outlining the scope of the project and announcing a number of modifications that had been made in response to the public feedback received at the November DRB hearing. He detailed the concessions that the faith community already presented to the city, as well as intensifying landscape buffering and installing a four foot high

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<sup>373</sup> Copy of 12/7/2001 invitation provided to planning staff. ICNEV file.

<sup>374</sup> Balazs, 12/18/2001, *op.cit.*

<sup>375</sup> Diana Balazs. "Scottsdale Reception on Mosque Draws 400," *Arizona Republic*. Northeast Valley & State Section, Page B3, 12/19/2001. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>376</sup> Hodgson, *op. cit.*

wall around on the south and west sides of the parcel to minimize the impact of headlights on neighboring houses.<sup>377</sup>

Perceptions of the session's value vary dramatically. The Muslim community's leadership felt that it changed hearts and minds among neighborhood residents, and helped humanize their congregation, make it familiar. They also felt that they gained valuable insight from other faith communities who had themselves experienced land use conflict around their developments. In particular, neighboring St. Bernard's faced similar opposition around traffic, parking, noise and light impacts, with comparable levels of tension.<sup>378</sup> St. Bernard's had even experienced resistance around the ringing of its bells at Mass times, with similar arguments as those made around the potential for the prayer from the mosque's minaret.<sup>379</sup>

Rev. Hodgson felt those who arrived at the meeting with concerns "left no longer complaining."<sup>380</sup> He believed that the majority of project opponents based their resistance on bigotry, not actual land use concerns, and that the session successfully addressed the prejudice of most. Of those who continued to discuss such worries as property value diminution, he reflected on his municipal experience and remarked: "the time to have worried about property values was during the master plan and subdivision processes." He particularly noted that in the former, roadway capacities and anticipated traffic loads were established for the neighborhood and public services were located; in the latter, the neighborhood was upzoned in a piecemeal fashion resulting in the densities that existed around the development site at the time of the mosque proposal. Regardless, Hodgson believes that the real value of the interfaith session was the way it shaped the public discourse around the proposal. He felt it "absolutely changed

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<sup>377</sup> Diana Balazs, "Plans for Mosque Changed; Effort to Appease Neighbors." *Arizona Republic*. Sun City/Surprise Community, Page 6, 12/22/2001. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>378</sup> This was the assessment of planner Kurt Jones, developer Ken Bates and resident Michael Bailey.

<sup>379</sup> Bailey interview.

<sup>380</sup> Rev. David Hodgson, Letter to Councilwoman Cynthia Lukas, chair of second DRB hearing, 1/5/2002. The letter reported on the attendance and outcomes of the St. Bernard session.

the press position from opposition to support” and less critical coverage helped to ameliorate project resistors.

On the other side of the coin, few of the heavily engaged neighborhood property owners took kindly to the accusations of bigotry, or to what they perceived as preaching in the St. Bernard’s gathering. Said one developer:

For a lot of the people that [this project directly] affected, it was a complete joke. Because, alright, so the leader of the Jewish congregation over on [64<sup>th</sup> Street (nearly 10 miles from the mosque site)] comes out and says ‘all we need is to sing Kumbayah and join hands and do this stuff.’ It wasn’t about that! You know, it’s great that the Muslims and Jews can get along, but you know, hey, *you* live with a blue dome in your back yard! So that was. . .a little annoying.<sup>381</sup>

The meeting was referenced negatively by at least seven people in the public comment phase of the next DRB hearing.<sup>382</sup> The minutes reflect one resident saying “. . .neighbors should not be expected to attend a religious forum to discuss residential issues.”<sup>383</sup> Attorney Alan Kaufman, purportedly representing 400 area residents, was paraphrased in the minutes criticizing the St. Bernard’s session for not being “a working session to discuss design issues. The purpose of the meeting was to discuss religious tolerance issues. This issue is not about religion but about location.”<sup>384</sup> A written comment on a speaker card blasted “church event was insulting as informational venue.”<sup>385</sup>

The role of two individuals in the St. Bernard’s session and the ICNEV proposal overall warrant brief discussion. Fr. Bob Voss paid dearly for his advocacy, losing his pastorship at St.

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<sup>381</sup> Bates interview.

<sup>382</sup> Revised minutes of the 1/10/2002 meeting of the Scottsdale Design Review Board. Pages 4-16,

<sup>383</sup> Comments of Terri Stanley. Minutes, 1/10/2002, page 10. ICNEV file.

<sup>384</sup> Comments of Alan Kaufman. Minutes, 1/10/2002, page 10. ICNEV file.

<sup>385</sup> Written comment of Deborah Goldstein, submitted Speaker/Citizen Comment Card 1/10/2002. ICNEV file.

Bernard's and being relocated out of the parish.<sup>386</sup> Cynthia Lukas, a city council member who would chair the second DRB hearing on the proposal, was involved in organizing the interfaith session "quietly."<sup>387</sup> She had a long-standing interest in interfaith issues, and following her experience with the Scottsdale mosque review, would go on to launch a second career as an interfaith documentary filmmaker.<sup>388</sup> While her advocacy efforts might have been laudable for a private citizen, I would argue that they were ethically questionable as a member of the review body adjudicating the mosque proposal.<sup>389</sup> Even if she was in fact able to be objective in her deliberations, her involvement with the interfaith advocacy initiative certainly would have created the perception of a conflict of interest. She ran for mayor in 2004, challenging the incumbent Mary Manross; some speculate that her support for the mosque project contributed to the collapse of her bid.<sup>390</sup>

### ***Proposed Land Swap Collapses; A Second Swap Proposed***

The first land swap (for the larger parcel on 124<sup>th</sup> Street and Shea Boulevard) apparently fell apart after the first DRB hearing. I was not able to confirm exactly when it collapsed or why, but I did find an interesting hint contained in an email sent to planning staff. An area property owner opposing the mosque wrote: "[Regarding lack of direct contact from the applicant,] I only heard

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<sup>386</sup> Ahmad, Hodgson, Hussain and Jasser interviews. It was suggested that Fr. Voss's removal was the result of complaints from parishioners and not diocesan disapproval of his participation. I was not able to confirm any of these assertions independently.

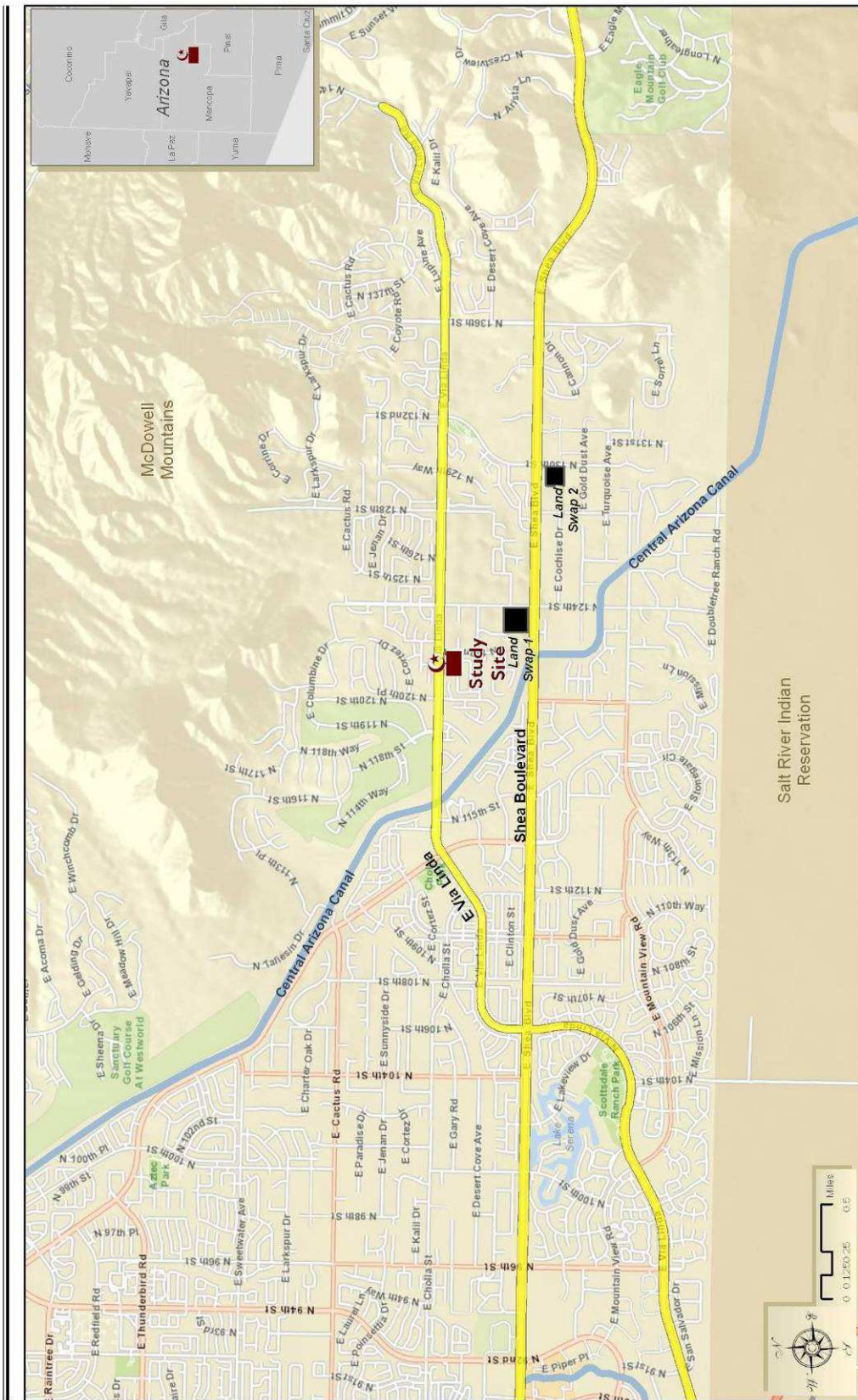
<sup>387</sup> Hodgson interview.

<sup>388</sup> Lukas's production company, co-owned with her life partner, is known as "Heaven on Earth Creations." From their website (<http://www.heavenearth.net/>; accessed 6/30/2011): "We formed our non-profit Heaven on Earth Creations in 2004 to give our efforts completely to love, forgiveness, beauty, and humanity's inseparable oneness. We believe that each of us has been born to this pivotal era of human history with a purpose which, collectively, can nurture our species towards its limitless capacity for unconditional love, nonviolence, sustainability, and unity in beautiful diversity."

<sup>389</sup> I asked Ms. Lukas via email if, when helping to organize the interfaith session, she was aware that she would be chairing the second DRB hearing for the ICNEV proposal. She responded: "While I don't remember definitively, yes, I must have known in December I would be DRB chair in January." Email from Lukas 7/7/2011.

<sup>390</sup> Although this sentiment was repeated by at least two interviewees, it is not likely that mosque vote was the largest factor that cost Ms. Lukas the mayor's office (she received only 15.4% of the vote). From election coverage in the *East Valley Tribune*: "Lukas, who perhaps was the biggest loser Tuesday because she resigned from the council mid-term in October to run for mayor, blamed the media attention she received for championing the Los Arcos subsidy deal with developer Steve Ellman. . . . Voters handily rejected the \$36.75million Los Arcos deal through Proposition 300." Published on the website of the East Valley Tribune, 3/9/2004; updated 3/10/2010. [http://www.eastvalleytribune.com/article\\_93a0cfb2-5e12-58f2-b325-409bfa9759a2.html](http://www.eastvalleytribune.com/article_93a0cfb2-5e12-58f2-b325-409bfa9759a2.html); accessed 6/30/2011.





Source: ESRI, DeLorme, and Tele Atlas

Map 5.8 Location of second land swap proposal in relation to the ICNEV development site and the first land swap proposal.



third hand that a church (which has a real estate motivated interest in the corner which was proposed for a land swap with the mosque] held a meeting “welcoming” the mosque to the community.” I was not able to independently confirm this notion though it was mentioned in a circuitous fashion by an interviewee. Since the residents party to the negotiations refused to speak with me, I rely on Zuhdi Jasser’s assessment, which seems more likely:

The land swap deal was not off the table [right away]. . . we actually truly, I mean truly, truly respected [the concerns of the neighbors] and. . . looked at moving to another place. . . because, you know, there’s no reason to stay somewhere you’re not wanted. [But] it was economically not feasible. . . it would not have been possible without an infusion of more cash. [Some of the neighbors negotiating the deal suggested] dump[ing] some money into it [but that didn’t come to pass].

Today, the site hosts McDowell Mountain Community Church, which will be discussed in a later section. Despite the failure, those advocating the land swap were not yet ready to give up on the possibility of relocating the mosque. They identified a second site, at 130<sup>th</sup> and Shea Boulevard near a power transmission station and close to the Mayo Clinic’s campus (see Map 5.8).

Again, in the spirit of compromise, the Muslim community was open to discussions and met with neighborhood representatives on the site. It was quickly rejected. Said then board member Azra Hussain:

It was next to the transformer, and I was like, ‘I am not going to have kids walking around [under that] and have the parents come back to me and say what the heck did you people think?!’ I [couldn’t] come back to the community and say we’re using your money to do this to you, I wasn’t willing to and I don’t know if any of the board members were willing to do it. [My fellow board members weighed] the much better deal in price, [but I said} it doesn’t matter. It’s not something [we] want; it doesn’t matter what price [they] give it to us at.

Even though the Muslim community rejected this second proposal after the site visit, neighborhood advocates continued to pursue it. In press coverage leading up to the second

DRB hearing, representative Larry Grobman announced that they would ask the city to delay action on the application so they could further pursue the 130<sup>th</sup> Street site: “We have pursued an alternative site. . .it’s much larger, almost two acres larger, to build on. We are willing to pick up the cost for the additional land.”<sup>391</sup> In the January 10, 2002 public hearing, and Mr. Grobman requested a “60-day continuance to finalize the new location of this religious facility.”<sup>392</sup> This statement seems to be a reflection of the determination, even desperation, among some property owners, and particularly those party to the land swap negotiations. After two other members of the public advocated for the continuance, Zudhi Jasser felt compelled to address it in his rebuttal: “. . .most of the testimony presented today has not been discussing design issues, [the purview of the DRB]. . .the issue of a land swap is not a design issue and is not on the agenda.”<sup>393</sup> The plea for a continuance was not successful.

The land swap may well have been motivated by the desire to preserve views and property values, but it suggests something more problematic, particularly in the case of the second parcel. That site was undesirable to the Muslim community because of its location near a power transmission station and potential health risks associated with nearness to high voltage wires. Attempting to locate the poor, minorities or other groups deemed undesirable in compromised or sub-par areas is a classic exclusionary tactic.<sup>394</sup> A local developer—who was himself among the opponents of the mosque proposal—made this blunt assessment:

If I did [that] in a residential transaction, the federal government would be on me for fair housing law violations. I can’t steer a community—now that I think about it that’s a federal indictment just waiting to come down on somebody. Because how dare somebody, it’s steering. You can’t steer a person of color from one neighborhood to

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<sup>391</sup> Diana Balazs, “Mosque Site Foes Seek Delay; Neighbors Offer to Swap Land.” *Arizona Republic*. Valley & State Section, B2, 1/10/2002. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>392</sup> Comments of Larry Grobman. DRB Minutes, 1/10/2002, page 8. ICNEV file.

<sup>393</sup> Applicant rebuttal, presented by Dr. Zuhdi Jasser. DRB Minutes, 1/10/2002, page 10 & 13. ICNEV file.

<sup>394</sup> The classic text in the matter of exclusion is Michael N. Danielson, *The Politics of Exclusion*. New York: Columbia University Press, 1976.

another. . .so it [was] being suggested ‘why don’t you guys move your Muslim mosque down here.’ Gosh, now that I look at it, if I did that with a black couple, I’d go to jail.<sup>395</sup>

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## PART X: SECOND LAND USE HEARING

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In advance of the second hearing, eighteen letters and emails were received by planning staff, in addition to untallied phone calls. All of the correspondence reflects land use concerns. Chief among them is the question of use compatibility—the appropriateness of a house of worship in a residential neighborhood. Neighbors continued to be incredulous that such a use, which many considered commercial in nature, could be allowable in a residential zone. The degree to which the design blended in with the neighborhood, loss of view sheds and increased traffic were also expressed concerns. Interviewees, particularly the ICNEV representatives I met with, believed that these land use concerns were genuine and did not mask underlying fear and bias. My assessment is the same, particularly for those respondents living closest to the development site.

### *The Role of Fear and Bias in Hearing Two*

Some terrorism concerns were raised in advance telephone communications with the planning staff.<sup>396</sup> It may be that the more anonymous forum of voicemail was deemed a “safer” outlet for

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<sup>395</sup> Bates interview.

<sup>396</sup> Jones interview. I did find one odd letter in the ICNEV file. It was received by the planning department on 1/29/2002, almost 20 days after the hearing in which the mosque’s design was approved. It was sent in a handwritten envelope with no return address, postmarked Phoenix. A geometric design that is reminiscent of Islamic design is clearly hand-pasted and photocopied at the top, and the text is typed in all capital letters. It reads: “Mosque at 122<sup>nd</sup> St & Via Linda. In the name of Islam, Jihad and Prof. Mohammed [sic] we are going to hit in the middle of your hearths as we did at W.T.C. if this project is rejected. Last year we did warn that we are going to hit in the middle of the infidels (Christians & Jews) [sic] hearths, so we did it in the name of Jihad & Islam. Soon we are going to turn infidel American into Islam whether you like it or not. We are going this time to use our honest brothers Americans converted to Islam. We are going to burn your churchs [sic] and synagogues you pigs, as it was done in the West Encanto Blvd. You have to leave our holliest [sic]place, i.e. Saudi Arabia soon and before we burn you infidel army. Prof. Mohammed [sic] bless all those hijackers (martyrs) who shocked the world in its entirety & Smashed the American economy. In the name of Jihad and Islam.”

such reactions given the clear message on purview that was delivered in the first DRB hearing. Even though overt statements of fear or bias were discouraged in public session, interviewees still reported that the second hearing was characterized by anger and tension, and a sense that fear and bias underpinned at least a portion of opponent's stances. I did not have access to video or audio recordings of the sessions so cannot make my own assessment of those claims. However, two hints exist in the minutes. One opponent stated that "his comments are not design related, so he would decline to comment,"<sup>397</sup> and a second, while speaking exclusively about his perception that the applicant had not made sufficient neighborhood outreach, referred DRB members to the comments "regarding safety and security" he had written on his speaker card.<sup>398</sup>

They were:

City officials must address budget items related to safety and security issues. The specific costs created by the mosque should be presented to the community. Taxpayers will be supporting a project which our enemies might consider their 'temple' or their 'monument.'<sup>399</sup>

It may well be that for a portion of the audience, fear and bias were at the root of their concerns, but they spoke to allowable site plan and design topics.

The chair of the session did report that she attempted to control statements of fear and bias, but only to a degree. City Council member Cynthia Lukas had just begun her rotation as chair, replacing Council Member Robert Pettycrew, who led the first public session for the proposal. She told me that although the minutes reflect little of the influence of fear and bias, she did struggle to maintain order and focus on issues of purview. Her response to my interview questions on the matter do support the perceptions of other interviewees:

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Elements of this letter suggest that a non-Muslim crafted this letter (particularly the reference to "Prof. Mohammed," which no Muslim would likely write, and the ) to raise concerns about terrorism at the mosque site. Planner Kurt Jones reported that the letter was given to law enforcement officials, who dismissed it as a legitimate threat.

Speculating, perhaps it was a last ditch effort on the part of a disappointed opponent to stop the development.

<sup>397</sup> Comments of Michael Mahgr. Minutes, 1/10/2002, page 6. ICNEV file.

<sup>398</sup> Comments of Jerry Green. Minutes 1/10.2002, page 6. ICNEV file.

<sup>399</sup> Speaker card completed by Jerry Green, 1/10/2002 DRB meeting. ICNEV file.

I was coached by the City Attorney, Mayor's office, and City Manager's office (primarily by the Attorney's office) not to allow testimony that was not directly germane to the case; they told me not to allow testimony, for example, that pertained to 9/11, and I kept reminding the audience during the meetings [sic] to stick to design issues. So that kind of testimony. . . was kept to a minimum. However, I wouldn't say that I held tight reins on the testimony, as I believed strongly in allowing people to speak their minds because I felt airing certain feelings would help to heal them. This is the kind of person I am, allowing both sides to speak, giving both sides their equal due of respect and time. I would have used the gavel, as with applause, which wasn't allowed, but very, very sparingly.<sup>400</sup>

Lukas also reported that fear and bias were openly stated in private meetings she had with opponents. The sentiment apparently surfaced in neighborhood organizing sessions. Of one particular meeting, an interviewee recalled:

[What was being said about the Muslim community and the threatening language being used] was embarrassing. . . I said 'I'm leaving, because whatever you think you're talking about, if something happens to somebody I don't want to say I was at this meeting.'<sup>401</sup>

Additionally, planner Kurt Jones reported that a site visit he attempted to host for neighbors between the DRB hearings was disrupted by an unidentified man who began shouting demands that the Muslim community state for the record whether they would practice Sharia law in the mosque complex. When he could not be calmed, Mr. Jones had no choice but to disband the meeting.<sup>402</sup>

### ***Meeting Format, Public Comment***

Planner Kurt Jones presented the modifications that had been made to the application since the last session, and related ways that the changes addressed concerns previously raised by board members and the public. Dr. Jasser again spoke on behalf of the Muslim community, clearly stating that the application met and exceeded all city requirements. He emphasized ICNEV's

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<sup>400</sup> Cynthia Lukas, Former Scottsdale City Council Member and Chair of the DRB. Written response to interview questions, 3/14/2011.

<sup>401</sup> Bates interview.

<sup>402</sup> Jones interview. In an email to me (5/13/2011), Jones reported that about 15 individuals attended the site visit.

attempt to meet neighborhood needs, and reiterated a willingness to negotiate and compromised on nearly all matters. Of the dome and minaret the minutes record:

Mr. [sic] Jasser observed that places of worship have elements of identity. The dome and minaret are elements of identity for the Islamic faith. Those elements are something the congregation and Board would not be willing to change.<sup>403</sup>

Initial questions and comments from DRB members seem to acknowledge ICNEV's responsiveness to public and board requests for plan modifications, particularly regarding color compatibility with surrounding properties. The chair requested that a representative of the city transportation department address concerns regarding the proposal's relationship to standing traffic standards. The official presented information on projected traffic volumes, predictions for accident rates and the potential for cut-through traffic, an issue raised by the public. "He reported, based on the information available, that the Transportation Department has concluded that this facility will not be a detriment to the welfare and safety of the neighborhood."<sup>404</sup>

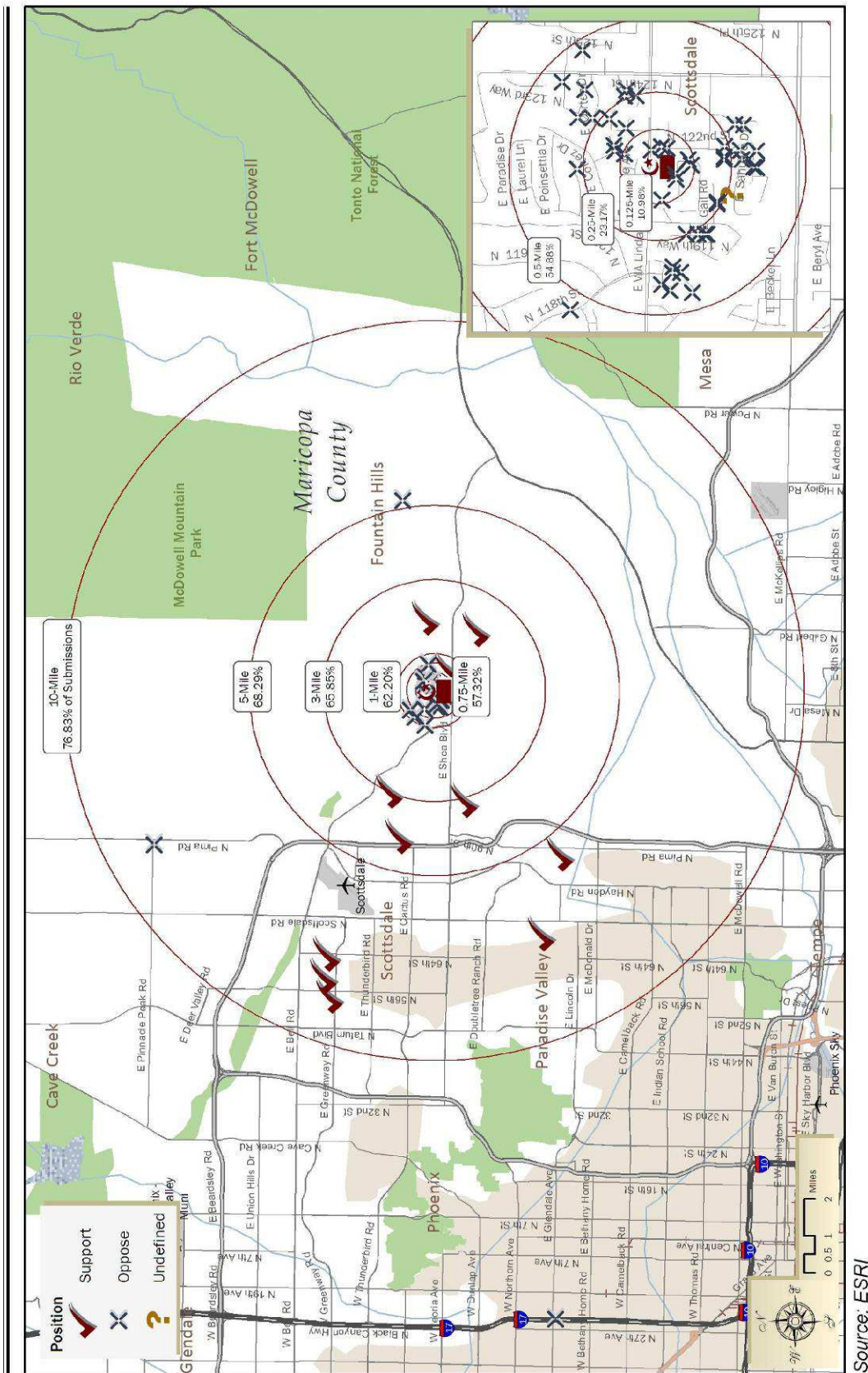
At least 37 members of the public attended the hearing; 27 identified themselves as opponents, ten as supporters.<sup>405</sup> Again, this number is notable given a 1pm session opening time on a weekday, and the fact that the ICNEV proposal was the 6<sup>th</sup> item on the agenda. Thirteen people spoke against the application; eight had also addressed the DRB in the November hearing. But the overall tack of the speakers had shifted November and from the advance written criticisms of the proposal—more than half the speakers focused on the questions of either advance notice or follow-up contact from the applicant. Four requested a 60-day continuance and a requirement for more outreach on the part of the Muslim community. Jones described the no-notice claims as typical delay tactics by protestors who feel they have no other recourse. In the hearing, a DRB member asked him to confirm the dates of sign postings at the development site. Address

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<sup>403</sup> Applicant presentation. Minutes, 1/10/2002, page 6. ICNEV file.

<sup>404</sup> Comments of Bob Brown, City of Scottsdale Transportation Department. Minutes, 1/10/2002, page 6. ICNEV file.

<sup>405</sup> Based on filed comment cards; members of the public use these to sign up to speak and/or to register their position on an application.



Source: ESRI

Map 5.9 Composite representation of addresses provided by opponents and supporters of the ICNEV development in letters, emails, faxes, messages, public comment cards and minutes of Design Review Board meetings.

checks that I conducted confirmed that those who claimed not to have received hearing notices lived beyond the legal radius required for notice, as well as beyond the expanded boundary used by the Muslim community for invitations to the St. Bernard's information session. Further, the mosque site is not visible from any of their properties; some are a number of subdivisions away (see Map 5.9).<sup>406</sup>

But the question of appropriate follow-up contact raises larger questions about expectations of and requirements for public outreach.

### ***Enough Outreach?***

In the close of the November session, Chairman Pettycrew requested that the applicant “communicate” with “neighbors [who] have not been contacted” and that a “win-win [solution be found] for all of the property owners in the surrounding area.” The vagueness of this instruction, and lack of measurable outreach goals, left much room for interpretation. A number of neighbors clearly were left with the impression that they should be contacted directly by the Muslim community. This sentiment was held particularly by neighbors whose parcels directly abutted the development site. During public comment, one stated:

. . .as a result of the November hearing he was very encouraged that the Islamic Community [sic] was going to meet with the neighbors. He noted that there has been no attempt by the Islamic Community to contact the neighbors. He further noted that he had even tried to contact them and there was no response.<sup>407</sup>

The attorney who claimed to represent 400 residents expressed similar expectations:

. . .at the last hearing the applicant was instructed to meet with the adjacent neighbors to find a win/win solution. Despite the 10-week continuance, working meetings were not held with the adjoining neighbors. He reported that he was not contacted, and he is

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<sup>406</sup> I mapped the addresses from the written correspondence and six from the spoken comments. During my site visit I attempted to see the mosque from these addresses and could not.

<sup>407</sup> Comments Charles Holley. Minutes, 1/10/2002, page 8. ICNEV file.



readily identifiable in the City. Everyone that attended that November meeting filled out a citizen comment card that lists his or her address and telephone number.<sup>408</sup>

At least one homeowner's association did proactively attempt to contact Naser Ahmad. The president of the Sendero Highlands HOA wrote to Naser Ahmad before the St. Bernard's session:

*12/13/2001*

*In response to the invitation to the St. Bernard's interfaith/informational session:*

As President of the Sendero Highlands subdivision I am somewhat confused. As you are aware, at the November 1, 2001 Scottsdale Development Review Board Meeting, it was strongly suggested by all board members that you work with the neighbors. Contrary to your comments made at the hearing neither you, or [sic] anybody from your congregation, has made any contact with our membership until your phone call yesterday. You asked me for my address so that we could attend a meeting scheduled in five days. If you have made any changes to your previous plans, this as been done without any feedback from us—your immediate neighbors. If our meeting is going to be productive, it would be reasonable for us to have a complete copy of your new proposal so that we might have time to study it. We ask that you supply this at your earliest convenience and reschedule the meeting for one week after receipt of same.<sup>409</sup>

*1/4/2002*

Please allow me to reintroduce myself and the community, Sendero Highlands, of which I am the current president. My name is Kenneth Bates. I have spoken with you on more than one occasion, via telephone, gave you my business card after the November Development Review Board Meeting, and sent you a memo on December 13, 2001 requesting that we have the opportunity to meet with you and discuss our concerns. We still have time to meet with you, prior to the next scheduled Development Review Board Meeting, and urge you to make contact with us. . .we think it only reasonable, in light of the recommendations made by the board members, that you make some kind of effort to work with us.<sup>410</sup>

During public comment, this gentleman described his outreach and said that Mr. Ahmad had not responded to his inquiries. Dr. Jasser attempted to smooth the issue in his rebuttal, explaining that Mr. Ahmad had been out of the country and likely had not received correspondence sent to him. Jasser also stated that the Muslim community did not feel it was appropriate to launch a door-to door effort, so instead held a public meeting and reception at St. Bernard's. The ICNEV

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<sup>408</sup> Comments of Attorney Alan Kaufman. Minutes, 1/10/2002, page 10. ICNEV file.

<sup>409</sup> Copy of 12/13/2001 memo from Ken Bates to Naser Ahmad, provided to Scottsdale Planning Department. ICNEV file.

<sup>410</sup> Copy of 1/4/2002 memo from Ken Bates to Naser Ahmad, provided to Scottsdale Planning Department. ICNEV file.

board felt that the session satisfied the city's requirement for outreach. Jasser, as well as another supporter, additionally pointed out that the public had over seventy days to review the proposal via the city's website and in the planning department, so could have educated themselves on its details and modifications.<sup>411</sup>

According to the ICNEV board members I interviewed, the Muslim community was in fact meeting with a number of parties individually, discussing problematic areas of the proposal and modifying it to meet their needs. And, as those parties had their concerns met, most backed down from their opposition. Said a developer: "[O]nce [we agreed to larger buffer and] I protected the values of my properties I was trying to sell, I moved on."<sup>412</sup> It seems likely that those who did not simply didn't want the mosque on the parcel, regardless of its final form. Of one individual who shared the mosque's south property line, Dr. Jasser told me:

We actually went to [the gentleman's] house, went inside, looked at his view and saw [it for ourselves]. . . [we] even mapped out [how the buildings would impact it] and spent a couple of Sunday afternoons trying to figure out what his concern was. [We really went] beyond. . . that was one of the reasons we agreed to the lower [the buildings] six feet. Because we were sort of calling their bluff. Because if it really was related to view, they [would have] told [us] they were happy with the outcome [after we agreed to lower the buildings].

In his rebuttal, Dr. Jasser described such efforts to DRB members, then told them bluntly that they "needed to determine whom they believe."<sup>413</sup>

Regardless of opponents' motivation for resisting the proposal, it is clear that all sides had disparate ideas about what was required of the applicant in terms of outreach. As a neutral observer I can appreciate both points of view. Lack of clarity on the part of the Design Review Board resulted in differing expectations. Without guidance, there was no benchmark to

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<sup>411</sup> Jasser comments, page 12 and Comments by Art Stine, page 8. Minutes, 1/10/2002, page 8. ICNEV file.

<sup>412</sup> Bates interview.

<sup>413</sup> Jasser, *ibid*.

determine how much individual effort was enough. In fact, in 2001/2002 individual neighbor contacts were not required of applicants to the Design Review Board. Only those whose projects were being reviewed by the Planning Commission and/or the City Council were expected to reach out individually. This point was not stated in the ICNEV review sessions until Chairperson Lukas brought it up moments before the DRB vote. From a legal standpoint, then, ICNEV had met its outreach requirements and, to a degree, gone beyond them. But this was little consolation to neighbors who were led to expect more.

### ***Board Response; The Gauntlet is Thrown***

The minutes of the DRB's final deliberations record members focusing primarily on remaining site plan modifications that could reduce the project's impact on surrounding properties: concealment of the trash containers, control of lighting glare and "hot spots," and increased vegetative screening, including more boxwood trees at the northeast corner of the parcel. Design related requests included modifying the social hall's main entry to include two additional columns and simplifying parapet detailing throughout the complex. One member requested larger color samples which could be studied in natural light, as well as the removal of purple hues from the modified design and a return to the board for final color approval. Dr. Jasser expressed concern that the detailed stipulations being made were "beyond what the board would ask of other facilities." However, in the staff planner's assessment the tweaks that were requested were neither significant nor atypical of standard DRB reviews.<sup>414</sup> Still, despite the comparatively minor modifications the board was discussing, the minutes suggest that members were hedging, circling back to issues related to community outreach and neighbor input. Dr. Jasser turned to the most powerful recourse available to the faith communities: the Religious

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<sup>414</sup> An opaque, potentially problematic question was raised by one member, seemingly out of the blue: Mr. Nelssen stated that because of the verticality of this facility, there would be a possibility to place a concealed wireless facility in the minaret. Mr. Jasser [sic] stated he is not sure where that concern comes from. He further stated they have not considered placing a concealed wireless facility in the minaret. Comments of Tony Nelssen, the DRB's Planning Commission Member, and response of Dr. Zuhdi Jasser. Minutes, 1/10/2002, page 13. ICNEV file.

Land Use and Institutionalized Persons Act. The minutes record only that he “presented information” on the act, but one audience member described the moment this way:

. . .in no two ways he got up and said, “City of Scottsdale, [do] you want to be the test case with [this] federal law?. . .He said it in black and white and [my fellow opponents and I] said ‘he just threw the gauntlet down.’ He stared the [DRB] down and they shrunk in their chairs. I remember it like I was there yesterday, he said it so well.”<sup>415</sup>

Dr. Jasser said that his facility with the federal legislation was gained through his own effort; he had not been coached by an attorney. The ICNEV board felt that attorney involvement only raised the stakes and would limit their ability to be flexible and responsive negotiating partners:

[I did] the homework. . .[I got information on RLUIPA] off the internet. . .I just did a search and did some reading on it. . . It’s easy to go the legal route but I don’t think that ever works. . .our plan from the outset was not to retain an attorney. [We would] consult attorneys behind the scenes to make sure we weren’t setting ourselves up for any problems that would be a liability in the future, [but not come in to hearings with a lawyer]. . . because legal is antagonistic always. Versus trying to come to a [mutually agreeable resolution]. . .we had thought [that if it came to that] we’d go to mediation [first]. . .but that never proved to be necessary.”<sup>416</sup>

### ***The Vote***

Despite apparent reservations, the DRB voted 6-1 to approve the ICNEV proposal. The stipulations placed on the approval related to the minor site plan and design issues described above; all were entrusted to planning staff for final approval. Interestingly, the lone nay vote was justified in terms of the complex’s architectural design, but it was not one of the DRB’s appointed design members who held the position. Instead, it was the rotating Planning Commission member.

Mr. Nelssen stated this is a mosque and it seems a little strange to try to [design] it like a residence [to blend in with the neighborhood]. . .he noted that some of the best architecture historically are [sic] places of worship. . . [he] stated that he would not support this request. He further stated that he did not feel that the mosque has been designed as well as it could be. He noted that he felt the location was fine. He further noted there would always be disgruntled individuals. He added he did not feel the design was polished enough because he felt that it should be a jewel.

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<sup>415</sup> Bates interview.

<sup>416</sup> Jasser interview.

It was not a rationale that one might have expected for the lone dissent in this case, given Scottsdale's civic emphasis on harmonious, consistent design and ordinance-enshrined goals and benchmarks to achieve it. But it raises intriguing questions about design subjectivity in land use conflict generally, as well as the particular challenges of design questions in the ICNEV case itself. I believe those questions warrant separate examination, and will address them in Part XIII.

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## PART XI: THE ROAD TO CONSTRUCTION

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### ***Lessons Learned: Outreach***

The Muslim community heard neighbors' complaints about outreach and communications loud and clear and soon after approvals set about calming relations with the surrounding community. Said former board member Azra Hussain:

When you're sitting in City Hall and you get the approval you want but people sitting behind you are all muttering and mumbling and not happy, you don't want to go into an environment like that. I don't want my neighbors to be scared of me. I don't want my neighbors to be upset at me. I'd like to know what their issues are before I've even done anything and work it out. . . We rented a room at Pima Inn. . .and once a week we would meet and we would invite all the neighbors that. . .were actually affected by us on the east side, on the south side and on the west side. . .And a lot of them showed up. Every week that place used to be full. There were 20-25 people in the room and there were like eight of us from [ICNEV]. . .First, we were [just trying to bring] down the level of anger. You know, what's bothering you? What would you like to see? What's happening?. . .Why are you so angry when you don't even know us? [And then we got into the details of what we might modify, within our approvals, to meet their needs].<sup>417</sup>

The sessions went on for a number of months and, according to ICNEV representatives did diffuse tensions. Because I was not able to persuade neighbors who took part in the sessions to participate in this study, I could not confirm their perceptions of their success.

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<sup>417</sup> Hussain interview.

As part of continued outreach, property owners of record for parcels within 300 feet of the development site were sent a postcard in August of 2002, announcing a DRB study session in which compliance with approval conditions would be reviewed by planning staff.<sup>418</sup> No members of the public attended that session or submitted advance comments to staff. All changes were subsequently given staff approval. Construction drawings for phase I (the social hall, commercial kitchen, library, funerary facilities and living quarters for the imam) were begun, as were ICNEV's fundraising efforts.

### ***Post-Approval Modifications, Neighbor Response***

As construction planning forged ahead over the next few months, it became clear to the project engineer, Tarif Jaber, that the design of the social hall, which would also serve as the prayer hall until the sanctuary could be funded and built, would pose acoustic challenges and create a “tunnel effect” in the room. Mr. Jaber submitted a request to planning staff in October 2002 to increase the interior clearance height of the room by six feet. Recognizing that any change in height would “be perceived by neighbors as an obstruction of their view,” he proposed to accomplish the six feet by raising the height of the parapet by only four feet and excavating the final two feet subsurface. The engineer considered two feet the maximum additional depth they could achieve given that the entire complex was already lowered six feet to accommodate neighbors' viewshed concerns. ICNEV proposed to adjust the height of the entire complex and not just the social hall so that the design would maintain the consistent parapet line that was requested by DRB members as part of earlier approvals. Mr. Jaber pointed out that even with this roofline increase from 18 feet to 22 feet, the complex would still be lower than the approved entry portico for the social hall, as well as substantially lower than the 30 feet maximum allowed in the zoning code.<sup>419</sup> The additional height would also allow more affordable management of the complex's HVAC condensing units; pad mounting had proved cost prohibitive.

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<sup>418</sup> Postcard announcing 8/22/2002 DRB study session on mosque modifications; address list attached. ICNEV file.

<sup>419</sup> Project narrative for parapet height increase, submitted by Tarif Jaber, Jaber Engineering. Undated, but probably submitted in October 2002. ICNEV file.

The DRB discussed the proposed modification in a study session, and requested that ICNEV conduct community outreach to communicate potential impacts. Neighbors within 300 feet were notified of the proposed project modification, and the ICNEV board held an open house two weeks prior to the November 21<sup>st</sup>, 2002 DRB hearing.<sup>420</sup> Planning staff attended the session, but no members of the public came.<sup>421</sup> Four phone calls and one fax were received in advance of the DRB hearing on the application, all from property owners who had participated in previous public comment sessions and who owned parcels that either abutted the development site or were directly across a residential street. View interruption was their primary concern; one, who owned a vacation parcel, feared diminution of property value.

At the hearing itself, only one of those callers spoke. He was joined by four others, including one who had not spoken in previous hearings. To counter their concerns regarding vistas, Jaber demonstrated how vistas would first be obstructed by the trees that downslope neighbors requested to have planted along the south boundary for privacy before they would be interrupted by the new building height.<sup>422</sup> Board chair David Ortega, the City Council member who rotated into DRB leadership after Cynthia Lukas, examined a photograph provided by one of the neighbors and acknowledged that even existing trees had already obstructed the view, let alone any new trees that would be planted by ICNEV to meet approval stipulations.<sup>423</sup> The one design member who sat for the previous hearings was critical of the proposal, stating that the architect should have been able to anticipate programmatic and acoustic needs and that the increased mass of the complex meant that it would not be “as beautiful of a building as was originally designed.”<sup>424</sup> A compromise was forged by the chair, who felt that the increased height could only be justified for the social hall and its reported interior design challenges. For the rest

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<sup>420</sup> Staff presentation by planner Kurt Jones. Minutes, DRB hearing 11/21/2002, page 4.

<sup>421</sup> Staff memo to DRB in preparation for public hearing 11/21/2002.

<sup>422</sup> Jaber presentation, Minutes, DRB hearing 11/21/2002, page 4.

<sup>423</sup> 11/21/2002 DRB minutes, page 6.

<sup>424</sup> Comments of Anne Gale, *ibid*.

of the phase I structures, the height would remain at the approved 18 feet and the cornice detailing presented in a stepped fashion.<sup>425</sup>



*Figure 5.4 West and south facades of ICNEV, showing stepped parapet approved by the Design Review Board. Photo by KE Foley.*

In an attempt to appease neighbors, design member Mark Soden added a stipulation to the approval that required ICNEV and planning staff to work with individual neighbors toward an improved planting plan that would mitigate viewshed impact from screening trees.<sup>426</sup> With those compromises, the proposal passed unanimously.

### ***Breaking Ground, Breaking the Bank, Breaking the Fast***

A groundbreaking ceremony for the Islamic Center of the Northeast Valley was held on March 15<sup>th</sup>, 2003. Just as the Muslim community was strengthened by an alliance of interfaith partners in its review process, so was it feted at the construction kickoff. Faith leaders from Christian and Jewish congregations, as well as mayor of Scottsdale, Arizona congressmen JD Hayworth and

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<sup>425</sup> Ortega comments, minutes, page 7.

<sup>426</sup> Soden comments, *ibid.*



about 200 other well wishers joined the ceremony.<sup>427</sup> Actual construction on the complex would not begin until May 2004, however. The ICNEV board was raising construction money as plans developed, and, though they were able to meet most of their goals, they needed to adjust some expectations based on pledge fulfillment and higher than anticipated design costs. The local press periodically ran project updates as the months went by; in one article, Tarif Jaber commented: "It is not really a delay. It is a reconsideration of what our priorities are and how best to spend money. We have been going at a fast pace, considering we are a nonprofit group [run by volunteers]."<sup>428</sup> Planning department spokesperson Robin Meinhart also sought to reassure neighbors who were perplexed by the inactivity and perhaps suspicious of potential major changes in the works: "They are fine-tuning the plans so it is in line with what the city requires. The changes are very minor and technical."<sup>429</sup> Press statements by ICNEV representatives also lead me to believe that the community did not want to begin construction until they knew that financing was sufficient to complete the exterior finishes of buildings and install landscape elements, including vegetative buffering.<sup>430</sup> A partially completed mosque in the neighboring city of Chandler sat abandoned for an extended time while additional funds were raised, and some in the neighborhood had expressed concerns that the same would happen at the ICNEV site.<sup>431</sup>

Throughout the fourteen months between the DRB approval and the actual construction start, the Muslim community continued to pray at the Pima Inn. They also continued talks with concerned neighbors. To ensure that the surrounding community was well informed when work

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<sup>427</sup> Diana Balazs, "Valley Religious Leaders to Attend Mosque Groundbreaking." *Arizona Republic*. Scottsdale Republic North Section, pg. 1, 3/15/2003. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>. And "Mosque Moves Past the Planning," n.a. *East Valley Tribune*, online edition. Posted 3/16/2003. [http://www.eastvalleytribune.com/article\\_e4b3f0b7](http://www.eastvalleytribune.com/article_e4b3f0b7). Accessed 5/17/2011.

<sup>428</sup> "Paperwork Delays Mosque Construction," n.a. *East Valley Tribune*, online edition. Posted 8/10/2003. [http://www.eastvalleytribune.com/article\\_f2cc6f07](http://www.eastvalleytribune.com/article_f2cc6f07). Accessed 5/17/2011.

<sup>429</sup> "Work on Mosque Delayed Again to Satisfy City Requests," n.a. *East Valley Tribune*, online edition. Posted 11/17/2003. [http://www.eastvalleytribune.com/article\\_8bc4f70b](http://www.eastvalleytribune.com/article_8bc4f70b). Accessed 5/17/2011.

<sup>430</sup> Quote from Tarif Jaber. Diana Balazs "More Waiting Time Ahead for Mosque; Construction to Start in a Few Months." *Arizona Republic*. Local Section, pg. B5, 8/8/2003. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>431</sup> Jasser interview.

finally did begin, planning staff and ICNEV representatives hosted a site visit on January 10, 2004, in which they reviewed project components and held up poles to demonstrate expected heights and impacts.<sup>432</sup> For some neighbors, time had not softened emotions. An attendee who lived in a gated subdivision to the east (and would not have had direct sight lines to the complex) told the press:

I would be upset if a US Postal Service were here, or a Catholic Church, a Jewish temple, a Christian church, a school, anything other than a custom home because that's why I bought here.<sup>433</sup>

Work proper did not begin until the following May, when building permits were issued for the project. Naser Ahmad told the press: "It has been one long road, and we have waited long enough. We complied with everything possible."<sup>434</sup> The dream became a reality in October 2005, when the first Ramadan prayers were held in the Islamic Center of the North East Valley. The interior finish was rough, but sufficient to secure a certificate of occupancy, and sufficient to fill the hearts of members; "any faith community 'feels a lot more energy when they have a permanent place.'"<sup>435</sup>

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## PART XII: THE BUILT MOSQUE IN ITS NEIGHBORHOOD CONTEXT

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There is no question that the Islamic Center of the North East Valley, as it currently stands, is much different than the design that was originally proposed, and has a lesser impact on surrounding properties than it would have done before public feedback on the proposal (see Figures 5.5 and 5.6). Certainly the participation of neighbors in the subdivision that adjoins the parcel to the south, Sendero Highlands, resulted in meaningful modifications in the plan. The

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<sup>432</sup> Diana Balazs "Muslims Meet with Neighbors at Mosque Site." *Arizona Republic*. Scottsdale Republic North Section, pg. 1, 1/12/2004. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>433</sup> Sharon Papez, quoted in Diana Balazs's "Mosques Worries Homeowners; New Project is Muslim Dream," *Arizona Republic*. Local Section, pg. B7, 1/12/2004. Accessed 5/17/2011 via <http://pqasb.pqarchiver.com/azcentral/>.

<sup>434</sup> "Mosque Work Will Begin Soon in Scottsdale," n.a. *East Valley Tribune*, online edition. Posted 5/18/2004. [http://www.eastvalleytribune.com/article\\_12398c66](http://www.eastvalleytribune.com/article_12398c66). Accessed 5/17/2011.

<sup>435</sup> Lawn Griffiths. "Mosque in the Making," *East Valley Tribune*, online edition. Posted 5/18/2004. [http://www.eastvalleytribune.com/article\\_edc85489](http://www.eastvalleytribune.com/article_edc85489). Accessed 5/17/2011.

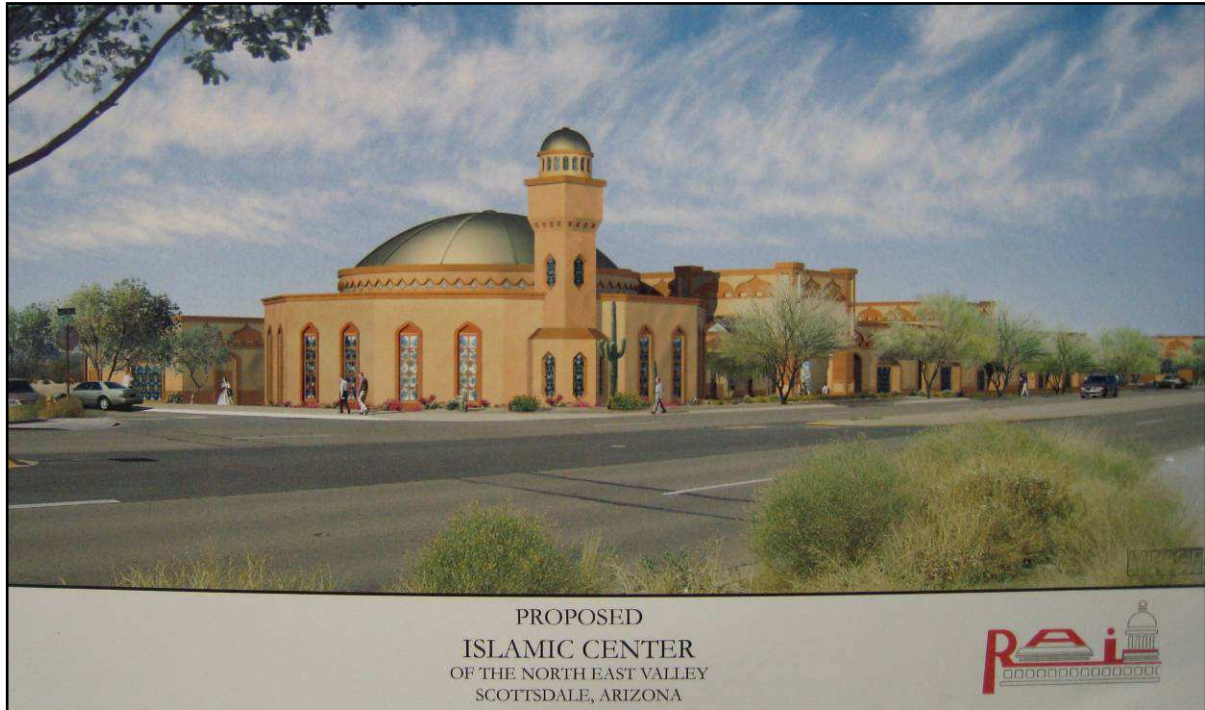


Figure 5.5 Original design for ICNEV by architect Sal Ramel. Perspective is from Via Linda, looking southwest.



Figure 5.6 ICNEV as built, 2009. Perspective from Via Linda, looking southwest. Note placement of building below grade and color differences from the architect's design. In this image, the octagonal prayer hall and minaret have not yet been built.

area residents, the developer and planner with whom I met, all attested to the degree to which the complex blends well into its surroundings; they say it is not the visual disruption that was feared and all described the structures as attractive. They were not aware of any problems with traffic, lighting or noise, and report that the center's members have been courteous and friendly neighbors.

### ***Building Heights, Placement of the Lot***

The most substantial modification from the original proposal is complex's placement below the grade of Via Linda. As one approaches the site from the east along that thoroughfare, one might easily drive past the Islamic Center without ever realizing what is or even that it's there; in fact from most points in the neighborhood, views of the mosque are very limited.<sup>436</sup>



*Figure 5.7 The view of ICNEV as one approaches from the west on Via Linda. The structure is in the center of the image, to the left, near the passing car. Photo KE Foley.*

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<sup>436</sup> I was not able to access the Sendero Highlands subdivision—which contains the houses most impacted by the mosque to the south—because it is gated and none of the residents on that street would agree to meet with me.



For the uphill neighbors, city views to the south have been largely preserved.



*Figure 5.8 Looking west along Via Linda, demonstrating the relationship in elevation between the ICNEV social hall and the upslope McDowell Mountain Arroyos subdivision. Photo KE Foley.*



*Figure 5.9 Looking south (down slope) from within the McDowell Mountain Arroyos subdivision (directly across Via Linda from ICNEV). The Islamic Center is the dark rectangle to the right of the trees. Photo KE Foley.*

For the down-slope neighbors the impact is also minimized, especially when the reduced height is combined with the spatial buffer provided by the preserved natural area open spaces (NAOS) and parking lot.



*Figure 5.10 Looking from N. 122<sup>nd</sup> Street and E. Shangri-La toward ICNEV and the easternmost house in the Via Verano subdivision. The mosque complex extends from the center to center right of the image. Photo KE Foley.*



*Figure 5.11 Looking from the ICNEV parking lot across the NAOS buffer at the westernmost end of the property, into the Sendero Highlands subdivision. Photo KE Foley.*



Additionally, post-approval negotiations with neighbors resulted in the use of lower trees along the south property line, so visual encumbrance from on-site vegetation was avoided, as well.



*Figure 5.12 Looking west and south into the Sendero Highlands and Via Verano subdivisions, across the ICNEV parking lot. Entrance to the social hall is on the left. Photo KE Foley.*



*Figure 5.13 Buffering wall and lower trees along south boundary of ICNEV property. Photo KE Foley.*

Setting aside the issue of views, there is another positive outcome of the complex's lowered grade. When standing on the site, one has the sense that one has departed from one's workaday surroundings and entered a sacred space; there is a feeling of purposeful separation. And being below street and sidewalk level does lend a degree of privacy for the Muslim community.<sup>437</sup>



*Figure 5.14 Illustrating the grade shift from street level along Via Linda to the pedestrian level within the Islamic Center complex. Photo KE Foley.*

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<sup>437</sup> The matter of privacy was particularly mentioned by former board member Azra Hussain.





Figure 5.15 Illustrating the degree of privacy afforded by the grade change within the courtyard at the east end of the ICNEV complex. The garage of a house on N. 122<sup>nd</sup> Street is just visible between the two trees. Photo KE Foley.

Of course, the Islamic Center has not yet reached its full height or visual impact—the 30' dome and 45' minaret have yet to be built (see Figure 5.16).

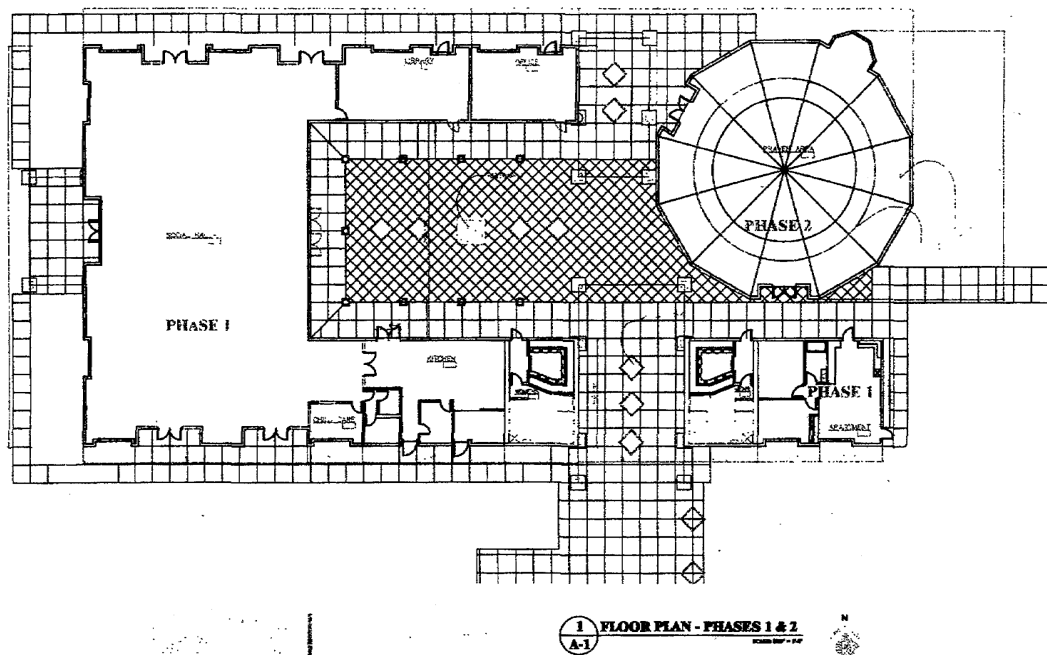


Figure 5.16 Detail of floor plan for ICNEV development. Phase 1 was completed at the time of this study, and included the social hall and ancillary uses on the left in U-shaped structure, as well as the imam's quarters in the free-standing rectangular structure on the lower right. The prayer hall and minaret, labeled Phase 2, had not yet been built.

In keeping with the phased construction plan, only the social hall, commercial kitchen, library, office, ablution facilities and imam's quarters have been built. Religious education classrooms originally planned for a phase III may not ever be built—the congregation is finding that the multipurpose room and library are serving education needs well.<sup>438</sup>



*Figure 5.17 On left, the imam's quarters in relation to the end of the south wing of the main complex (containing the ablution facilities). The dark pavement indicates the future location of the octagonal prayer hall. Photo KE Foley.*



*Figure 5.18 Interior courtyard formed by U-shaped structure containing social hall and ancillary uses. The trees, water feature and arcaded exterior walkways are typical of historic mosque designs in the Middle East and South Asia. In the local application at Scottsdale, they provide respite from the Sonoran Desert's sun and heat. Photo KE Foley.*

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<sup>438</sup> Hussain interview.

The social hall currently serves as the prayer space until the mosque and minaret are completed in phase II; they will rise at the northwest corner, where a basketball court currently serves as place holder. The Muslim community was resoundingly clear in public hearings that their plan is phased, as was press coverage when phase I opened for use.<sup>439</sup> Still, there seems to be some public perception that the dome and minaret were not approved; the two residents who were willing to talk to me both believed this to be the case.<sup>440</sup> When building permits are filed for phase II, the controversy over height may reignite among property owners who witnessed the approval process and/or have got accustomed to the existing height; it is likely to begin fresh for those who have bought in the neighborhood since phase I was constructed. Said planner Kurt Jones:

I told [Tarif Jaber, the engineer] this: you are making a mistake by just building this [phase] and he said 'we don't have funding.' And I said I understand you don't have funding but you might want to think about, you know, talking to other mosques around the country and getting initial loans or funding or something because you need this to go away as fast as possible. And if you build this all at once it will. It will be hard to build it all at once from a financial standpoint obviously, but [building it in phases will be] harder from a public perception standpoint. I've got other cases that are phased and when they start on the second phase people are like 'I didn't know!'<sup>441</sup>

Along the west perimeter of the complex, at 122<sup>nd</sup> Street, is a staircase that leads into the courtyard next to the prayer hall area (see Figure 5.19). It is not intended as a point of entry, but instead would allow access for rescue personnel in an emergency.<sup>442</sup> When the prayer hall is complete, I can imagine that congregants arriving late will be tempted to park along 122<sup>nd</sup> Street and enter the sanctuary via the stairs, rather than using the proper parking lot. This may cause tensions with property owners along that street, as does similar "short-cutting" at other religious properties and traffic-generating venues. The fact that the Muslim community worships at mid-day on Fridays may mediate impacts somewhat.

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<sup>439</sup> Griffiths, op. cit. "And in time work will start on the mosque's domed masjid, or prayer hall—a 4,000 square-foot circular building aligned with Mecca where as many as 250 people will be able to kneel in prayer."

<sup>440</sup> Bailey and Steffens interviews.

<sup>441</sup> Jones interview.

<sup>442</sup> Kurt Jones, responding to inquiry from DRB member Gale. Minutes, 1/10/2002 DRB meeting, page 13.



*Figure 5.19 ICNEV's west staircase, leading into the courtyard. It was approved as an entry point for emergency personnel, and not as a pedestrian entrance to the Islamic Center complex. Photo KE Foley.*

### ***Aesthetics***

Although the Muslim community was not willing to compromise on design elements that it deemed critical to the religious identity of the structure, such as the round shape of the prayer hall and the inclusion of a dome and minaret, they were willing to appease neighbors by downplaying surface treatments, materials and colors. Keel arches, typical of Islamic religious architecture in the Middle East and South Asia, were originally designed to run the cornice line of the whole complex, except the prayer hall. To simplify the decorative program, the keel arches were used exclusively on the portico of the social hall. Additionally, at the request of DRB members, cornice detailing that would have been emphasized by contrasting paint colors was muted. The overall palette was changed from the mustard and sienna hues that were originally proposed (see Figure 5.5) to a more sedate range of low saturation beiges and mauves (see Figure 5.20). Similarly, the dome was modified from blue to a burnished green with a lower reflective value.



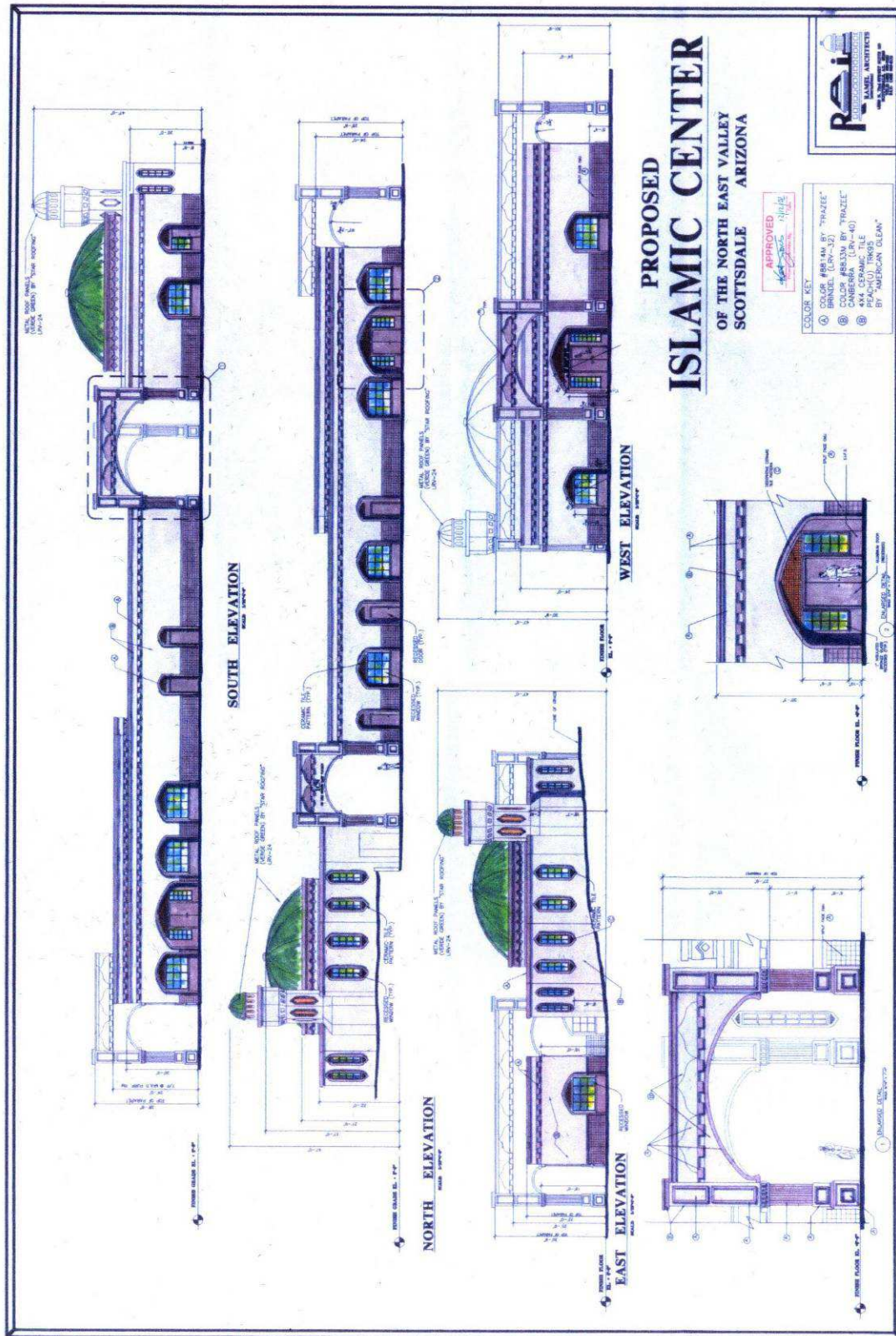


Figure 5.20 Color elevations for ICNEV approved by the Scottsdale Design Review Board. Sal Ramel, architect.

Although architect Sal Ramel said he drew the palette he originally proposed from houses around the neighborhood, the public and the review board overwhelmingly felt they were too bold and too bright in their context, particularly on so large a structure. The surrounding streets are remarkably consistent in terms of color and blend gently into the hues of the desert floor. This conformity is not happenstance, of course. The Environmentally Sensitive Land Ordinance (ESLO) in effect for the neighborhood is very specific regarding acceptable palette selections, even dictating chroma and value ranges.<sup>443</sup>



*Figure 5.21 Typical streetscape in the neighborhood around ICNEV—Lupine Avenue near N. 122<sup>nd</sup> Place. Photo KE Foley.*

ESLO's mandates seem to form the basis of the community's collective understanding of what "feels" like "desert architecture." Muting the mosques colors, therefore, and bringing the proposal more in line with neighborhood expectations seemed to have assuaged many opponents. Said one who lives across Via Linda:

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<sup>443</sup> The ordinance as well as design staff comments on the mosque proposal refer to the Munsell Book of Color, which defines value as the lightness or darkness of a color and chroma as is the purity (saturation) of a color. Planning Comments, 12/28/2000. ICNEV file.

I was hoping the colors weren't going to be too out there. Hoping they were going to be desert colors. [As modified, the mosque] worked out well. The desert colors fit in well. [I mean] just the natural colors around here. The green plants, you've got some brown desert and that type [sic] of colors, yeah desert. Pretty much the natural colors of the desert floor.<sup>444</sup>

Founding ICNEV board member Azra Hussain made this assessment:

I don't think we gave up a lot. I really don't. Because to me and everybody else there it would have been beautiful to have the original design that we had in our minds. And this really isn't that different from [that design]. . . it was more important to the majority of us that this was a mosque in Scottsdale and that it reflect that. Because my children's identity is that they're American Muslims from Scottsdale. . . I want them to walk to it and go 'that's our mosque; that's what a Scottsdale mosque looks like.' And you go to Kuwait, that's what a Kuwaiti mosque looks like. Yeah fine you go to Egypt, that's what Egyptian mosques look like. But this is what a mosque in Scottsdale looks like. And I think we did that. I think we achieved that [even though some of] the pretty stuff, [the decorative program] is missing. . . To me [the color is] the only thing I feel like I gave up [because we had to go with the darker colors]. [And] having to sink everything down [several feet] but I don't think I gave up. . I don't think I compromised as much as I worked with my neighbors to make it okay for them. And I think I like that. I like that today I'm actually okay with it because when people are driving by, yes they can kind of look down and look to see who is in there, what's going on but it's a level of privacy. I'm okay with that. And am I making myself feel better? I don't think so. I don't think I am. I think we did okay. I think when the center is finished the way we designed it, I think it will be a very nice center.<sup>445</sup>

I agree with Ms. Hussain's assessment. Despite the modifications to the mosque, it does read as a distinctly Scottsdale design that sits comfortably with its surroundings. Like many of the residences around it, its stuccoed walls are reminiscent of the adobe forms indigenous to the American Southwest. The complex's decorative program is abstract and subtle, and its colors grow gently out of the desert floor and into the surrounding built environment. Despite the height and massing of the complex, its battered walls and the deep recesses of its windows and doors give the impression that the facility embraces the landscape and strives not to compete with the Sonoran grandeur. A key element in the success of the design is the low reflective quality of the

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<sup>444</sup> Bailey interview.

<sup>445</sup> Hussain interview.

colors. The sedate shades of mauve and purple provide a merciful respite from the glaring desert sun.

At the same time that the structure seems at one with its surroundings, its purpose is recognizable, and its historical antecedents evident. For the time being, the cues that the building is a mosque are subtle—the keel arches on the cornice and fenestration; the pishtaq portal at the social hall's entrance. But when the prayer hall, dome and minaret are complete, there will be no doubt what function the complex serves. These elements, familiar and commonly recognized symbols of Islam, will signal to passersby that Muslims, Muslims of Scottsdale, practice their faith on the site.

ICNEV is not the first of Scottsdale's congregations to design a complex that both symbolizes its faith and relates to the city's natural and built environment. Rather, it is the continuation of an established local tradition. I have already referenced the basilica-like massing and classic central dome of Assumption Greek Orthodox, which, rendered in adobe and tile, are decidedly Southwest (see Figure 5.3).

Temple Kol Ami, the Jewish congregation which strongly supported the Muslim community during the ICNEV review process, provides an even more fascinating and appealing example. Like ICNEV, the synagogue successfully draws on the historical precedent of the ancient Middle East. It is meant to recall the Israeli cities of Masada and Jerusalem; specifically, its offset masonry units are reminiscent of the massive stones in the Wailing Wall.<sup>446</sup> At the same time,

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<sup>446</sup> Drawn from the website of the Temple Kol Ami architects, Will Bruder + Partners, Ltd. <http://www.willbruder.com/> (accessed 8/30/2011) and "Temple Kol Ami Worship Education Center and Gan Yaladeen Learning Center," published 5/16/2008 on the website architecture-page, [http://www.architecture-page.com/go/projects/temple-kol-ami-worship-education-center-gan-yaladeen-learning-center\\_\\_all](http://www.architecture-page.com/go/projects/temple-kol-ami-worship-education-center-gan-yaladeen-learning-center__all) (accessed 8/30/2011).



the temple's low, tiered, rectilinear massing pays tribute to the structures built by the Pueblo people who once populated Arizona.



*Figure 5.22 Temple Kol Ami, 15030 North 64<sup>th</sup> Street, Scottsdale. will bruder+PARTNERS, Architects. Photo © Bill Timmerman; reprinted with permission.*

Given these striking examples of religious structures in Scottsdale that both draw on faith-specific forms and speak to their surroundings, one is left to wonder what, from a design perspective, went wrong in the Scottsdale mosque review. A revealing examination of the case's aesthetic issues, as well as an exploration of contextual definitions of local architecture, follows in Part XIII.

As discussed in introductory sections, design compatibility—the concept that built elements should “blend” with each other and with the natural environment—is strongly engrained for residents of Scottsdale via the city’s ordinances and the highly specific covenants, conditions and restrictions of private homeowners’ associations. Because of those articulated public and private design guidelines, owners of commercial properties and residences have a clear sense of what is expected of them and their neighbors in terms of form, height, materials and color palettes. But prior to the completion of another General Plan update in late 2001, there were no specific design guidelines for religious facilities.<sup>447</sup> The only guidance during the ICNEV review was a confusing, subjective Design Review Board mandate that the design for religious structures be “compatible.” The ambiguity of the mandate would have made the review of any house of worship problematic. To complicate matters, ICNEV introduced a new building type to Scottsdale; when the proposal was made, there were no purpose-built mosques in the city, and few in the surrounding metropolitan area. As such, there was no precedent for reviewing the form, and little facility with its design vocabulary among municipal officials. Together, unclear definitions and ignorance influenced the treatment of the mosque’s design from the earliest stages of the review process and led to some of the most challenging aspects of the ICNEV conflict.

In October 2000, the planning department’s design specialists reviewed a preliminary version of the Islamic Center’s design, and compared it to the ordinances in place for the parcel and neighborhood. They commented:

While the basis of the proposed design does come from an arid climate, the foothills of this area are probably much different that the Middle Eastern regions that these forms [the dome, the minaret, the keep arches, the entrance portals] originate from. . . The

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<sup>447</sup> Jones interview.

current proposal requests that a cultural archetype be allowed to be placed in a context that is has very little in common with. The architectural review team believes that this is possible, however, stylized modifications may be required to the foreign appearance of the structure to be sure that it still speaks to the local surrounding architectural dialect.<sup>448</sup>

Although the context of the comments is design-related and speaks to General Plan goals for aesthetic quality and design harmony, the language clearly has greater sociopolitical implications. At a very early stage in the review process it shaped the municipal dialogue around the concept of “otherness” and implied, even if unintentionally, that the Muslim community *itself* was not compatible with the neighborhood. This general sentiment was repeated by correspondents and speakers during the public hearing process, suggesting once again the careful attention that opponents paid to process and documentation. Said one:

. . .the ethnic look of the architecture will not fit well. The city is supposed to represent the citizens of Scottsdale, not just outsiders who want to come in and change the character and flavor of an upscale area.<sup>449</sup>

I contend that this discourse of design dissonance became a proxy narrative for concerns over the validity of the Muslim community’s members as Americans and as residents of Scottsdale.

Setting aside the potential sociopolitical connotations of the planning staff’s design critique, it remains aesthetically and theoretically ambiguous. To remedy the “foreign appearance” of the mosque, the staff recommended design modifications that would “anchor” the structure to the earth. Thick walls and battering, they argued, would suggest “indigenous forms” such as adobe structures (and, parenthetically, make it more similar to Temple Kol Ami). Based solely on this memo, a neighborhood visitor might expect to find a collection of archetypical Southwest buildings around the mosque—low-slung, squared structures of smooth, hand-formed mud brick, pierced by deep-punched window openings and drawn from regional Native American

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<sup>448</sup> Fax from Jones to Ramel, 10/24/2000. ICNEV file.

<sup>449</sup> Email to planning staff signed only “Nina,” dated 1/9/2002. ICNEV file

antecedents. When thinking of local architecture, perhaps one might even expect clean, ground-hugging, minimal lines drawn from the designs of Frank Lloyd Wright at Taliesin West, a mere 1.8 miles from the development site. Instead, walking the streets of East Shea one sees row on row of tile-roofed, Mediterranean-style villas articulated with a *mélange* of rounded arches, engaged columns and interior courtyards. It is a post-modern mash-up of forms more typical of Southern Spain or Italy than the American Southwest, and one is left to wonder how these structures themselves passed planning and neighborhood muster as “Sonoran desert architecture.”



*Figure 5.23 Typical home located near the Islamic Center of the North East Valley. Photo KE Foley.*

I discussed the Mediterranean look of the surrounding neighborhood with interviewees. Many felt that style referred to the Spanish Colonial period, and was “local” by its association with that era of Southwest history; it therefore seemed “natural” in Scottsdale.



*Figure 5.24 Typical home located near the Islamic Center of the North East Valley. Photo KE Foley.*

Digging deeper, one realizes that the origins of the neighborhood's dominant Mediterranean style are far more banal than a nod to the fallen empire that once ruled the desert. A developer I interviewed told me that he and his peers were simply meeting the market, building what was fashionable and salable in the late 1990s and early 2000s. That the forms might be "local" or appropriate to the desert was not necessarily their concern.<sup>450</sup>

Pulling back to a broader comparison, the designs are almost indistinguishable from those in demographically comparable neighborhoods built across the US in that decade, such as the subdivision "Mission" architecture of Southern California. Still, my research indicates that the style was embraced as character-defining and emblematic of the local in East Shea, and formed the basis for a comparative critique of the Islamic Center.

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<sup>450</sup> Bates interview.





*Figure 5.25 Typical home located near the Islamic Center of the North East Valley. Photo KE Foley.*



*Figure 5.26 Typical home located near the Islamic Center of the North East Valley. Photo KE Foley.*

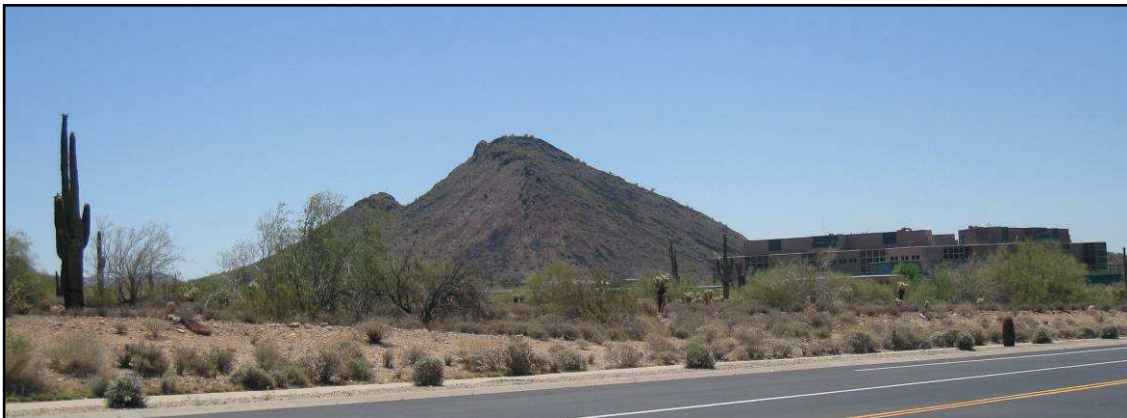
Throughout the review process, the idea persisted that the mosque should look similar to the houses around it and should not stand out in any way. Said one neighbor:

Please be assured that there is no question of religious intolerance in this case. If the mosque conformed to the style, scale and look of the surrounding propert[ies] then there could be no objection to the building.<sup>451</sup>

At least one mosque supporter attempted to articulate alternative thinking on the matter of conformity:

Do we really want Scottsdale to be a cookie cutter town? I may be mistaken, and please correct me if I am, but isn't the purpose of the guidelines about color and architecture to keep someone from building a purple house with orange polka dots—i.e. an eye sore or something that looks completely out of place? My understanding was that those guidelines were in place to ensure that the buildings were harmonious with the surroundings, that they complemented the surroundings, not that they were exactly the same as the surroundings. . . Scottsdale and its citizens are not a melting pot, we are a salad, all the parts mix together but each retains its own flavor. I think this mosque is a perfect example of that. It blends materials as well as architectural elements that are used in the surrounding structures while still retaining the flavor of a traditional mosque. It's a statement about what makes Scottsdale the most livable city.<sup>452</sup>

Surely the predictability offered by design guidelines—and the comfortable conformity they shaped—was the motivation for some critics of the mosque's design. But for others, the discussion of compatibility provided cover for the underlying desire to exclude the Muslim community. To support this claim, one need only make the briefest examination of other religious and secular institutional uses in the neighborhood.



*Figure 5.27 The Mayo Clinic, 136<sup>th</sup> Street between Via Linda and Shea Boulevard, Scottsdale. Photo KE Foley.*

<sup>451</sup> Email from John and Alison Quinn, dated 1/3/2002.

<sup>452</sup> Email to DRB chairman Robert Pettycrew from ICNEV member Nadia Pasha, dated 11/3/2001.



*Figure 5.28 The Mayo Clinic (middle left of image) seen in relation to houses along Via Linda near 126<sup>th</sup> Street, ten blocks west of the facility. Photo KE Foley.*

The Mayo Clinic, the public schools, and even the Roman Catholic Church, all built prior to the



*5.29 Mountainside Middle School and Palomino Public Library complex (left) in relation to upslope homes along Via Linda (near 126<sup>th</sup> Street). Photo KE Foley.*

mosque, are recognizable in their purpose and distinct in their height, overall scale and color; they make no attempt to “look residential” or blend in with the surrounding houses.





*5.30 Playing fields of Mountainside Middle School in relation to houses in the Sierra Foothills subdivision, as seen from the parking lot of St. Bernard of Clairvaux Roman Catholic Church. Photo KE Foley.*

It is particularly informative to consider St. Bernard of Clairvaux on 124<sup>th</sup> Street between Via Linda and Shea. One neighbor who called the mosque design “architecturally offensive,”



*5.31 St. Bernard of Clairvaux Roman Catholic Church, N. 124<sup>th</sup> Street between Via Linda and Shea Boulevard. Photo KE Foley.*

referred to the success of the recently completed Catholic sanctuary “[the church] is truly an asset to the area since it blends with the terrain.”<sup>453</sup> While the complex does blend stylistically because of its Mission massing and decorative detailing, its height, mass and bright white walls are jarring contrasts to the surrounding desert floor. Certainly, its exterior’s reflective value, a point of contention in the selection of colors for the mosque, is much greater than that of ICNEV. An even more dramatic contrast is found in the evangelical McDowell Mountain Community Church, built after the mosque was completed.



5.32 McDowell Mountain Community Church, N. 124<sup>th</sup> Street near Shea Boulevard. Photo KE Foley.

Seemingly designed to mimic the colors and textures of desert rock formations—and an impressive design in its own right—the church arguably has far less in common with the surrounding architecture than does the final design for the mosque. While planner Kurt Jones reported that it and St. Bernard’s were not without controversy, he said that they did not experience the same degree of design scrutiny that the mosque did, nor did they draw the ire of neighbors based on their visual difference from the surrounding housing. Based on these comparisons, it seems reasonable to assume that additional, exclusionary desires drove design-

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<sup>453</sup> Letter from Michael and Shirley Myer, dated 9/26/2001.

based neighborhood opposition to the mosque. One must be careful, however, not to equate neighbor opposition with the city's approach to the project.

### ***The Problem of Subjectivity in the DRB Review Process***

My research indicates that the mosque was not necessarily held to a more stringent design standard by the Design Review Board or planning staff. DRB minutes from other contemporary institutional and commercial reviews, as well as my interviews, indicate that members approached applications with the same eye for detail and a similar quest for conformity. On the same night that ICNEV was first reviewed, the DRB considered a Saturn car dealership proposed in a commercial district near the municipal airport. Members made the following observations:

Mr. Cortez stated. . .that he is somewhat confused with regard to the past direction that the Board has given to applicants with trying to establish a different palette here in the desert. Specifically trying to stay away from the warm colors, the beige image that Scottsdale has presented.

Mr. Soden stated he felt the Board was trying to create something unique in every building as opposed to the standard corporate image as well as looking for colors that are responsive to the desert and materials that are responsive to the desert climate.

Mr. Gulino stated [that]. . .he felt the warm grays would be an improvement, but felt the colors were in context with the building across the street.

Mr. Soden moved to continue [the case] to give the applicant opportunity to take another look at the colors and materials so that the building says a little bit more about our unique community and our environment.<sup>454</sup>

Like the Islamic Center, this car dealership was caught up in a muddled, subjective assessment of what constituted local design. Clearly, a shifting basis for review would have been problematic for any type of new development, particularly one that was controversial.

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<sup>454</sup> Minutes of the 11/1/2001 Development Review Board meeting, Case 66-DR-1999#2, page 3. Comments are not quoted here in the order in which they were made, nor are they successive comments.

Scottsdale's systemically confused discussion of style, form, color and materials raises challenging design questions: What is "traditional" architecture in a place with a strong indigenous heritage as well as a strong colonial heritage? Scottsdale is populated by transplants. In the abstract, they, too, are colonizers and the culture they bring is additive. Is their architectural contribution less valid? More alien? Is one tradition privileged over another? What is "local" architecture in a homogenous design environment?

I would argue that the mosque is simply a material product of the city's evolving demographics and expanding cultural landscape. The design modifications it underwent as part of public review make it a distinctly Scottsdale mosque, sharing materials, colors, and a general decorative scheme with surrounding structures. However, like Assumption Greek Orthodox Church and Temple Kol Ami, it is unique in its form and use. ICNEV's signature design elements—a circular prayer hall, a dome and a minaret—do appear in various iterations on other Scottsdale buildings, but in combination they will shape the unique character that communicates the complex's function. There will likely be a good deal of controversy when the construction of these elements is begun. They will never completely disappear into the streetscape. But buildings become landmarks when they don't disappear—when they are recognizable and unique. In that sense, Assumption and Temple Kol Ami are already landmarks, accepted and even admired by Scottsdale's residents. With time, those residents will become accustomed to ICNEV's contours, as well. With outreach and education, they also will become accustomed to the Muslims who use the complex, and the ways they use it. And ICNEV, like the churches, temples and secular institutions around it, will become just another element in the local design lexicon.

Although the conflict in the ICNEV review process resulted from a complex, nuanced mix of elements, several leading factors stand out in analysis. Some clearly increased the conflict, others contributed to its management and reduction, and still others had mixed influence on outcomes. The sources cannot be surely identified, but fall within some blend of actual land use concerns, fear and bias, and the gray area where the two overlap.

There seem to be varied assessments of the level and nature of conflict in the case. The planner and developer I interviewed felt that the level of participation and degree of conflict did not differ from other controversial land use cases, and especially did not differ from other religious land uses they had experienced. The immediate influence of the September 11<sup>th</sup> attacks did change the language and content of debate, these participants claimed, but not the degree of tension. Former City Council member and DRB chair Cynthia Lukas had a contrasting impression:

Out of the hundreds of cases that I either deliberated on Council or [the DRB] or the hundreds I was involved in as a citizen, this was the nastiest. . .it was the only case over which I was threatened. This occurred during and after some meetings I had with citizens in the neighborhood, who were opposing the mosque. One of the citizen leaders threatened me verbally both in person and over the phone and did it in a manner (through tone and body language) that implied physical harm.<sup>455</sup>

Interfaith organizer Rev. David Hodgson also reported being threatened.

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<sup>455</sup> Cynthia Lukas, Former Scottsdale City Council Member and Chair of the DRB. Written response to interview questions, 3/14/2011.

### ***Leading Factors that Increased Conflict***

In addition to the problematic design and compatibility issues addressed in the previous section, a number of other factors contributed to the escalation of conflict in the ICNEV review process.

#### **9/11 Related Fear and Bias**

The nearness in time of the first public hearing to the 9/11 attacks obviously is the single greatest factor in increasing tensions in the review process. Little more needs to be added to this point beyond the fact that the mapping exercise I conducted in my analysis demonstrates that none of the opponents who openly voiced exclusionary desires related to fear and terrorism lived adjacent to the mosque parcel. Most lived at least five blocks away and few had direct sight lines to the mosque. Arguably, they were less impacted by the development than those who expressed concerns based on land use and property value concerns. This is not to say that those living closest to the site did not have similar fear-based concerns, but they did not express them in public session or in written comments.

#### **Demographics and Engagement**

The well-educated, affluent population in the neighborhood that was engaged in the public planning process for ICNEV offered a strong, well-organized response to the proposal. They were particularly aware of planning issues because of the 2000 General Plan update, which was focused in large part on the East Shea area. They seemingly felt sufficiently comfortable engaging and challenging public officials. The wealth and social status of these opponents also increased their financial stakes in the outcome; they were motivated to block what they viewed as detrimental to property values. These ideas played out most clearly in the land swap, which could only be proposed by a real estate savvy, wealthy group that felt socially and politically empowered to make such a proposal. The land swap proposals themselves contributed to

elevating conflict in the review process; these background negotiations were distractions that extended the length of the public debate and created false hopes for exclusionary outcomes for those with such motivations.

### Development Fatigue and Related Issues

The fast-paced and intense rate of development in East Shea in the 1990s, I contend, resulted in development fatigue among property owners. They had grown tired of the disruption caused by construction, and the impact that an expanding population had on traffic, services and amenities. Many opponents felt as if they had bought in an area with scenic beauty that would afford a quiet, suburban lifestyle:

We have been residents of Scottsdale for 38 years and have had to move various times to try and recapture the promise of Scottsdale. We don't want to move again, but probably would if [the mosque] were to be built and would suffer a financial loss due to a decrease in property value because of it.<sup>456</sup>

We have lived here for nearly 10 years and in that time have been the unhappy witnesses of the continual degradation of the area due to ever-loosening zoning restrictions. The higher density zoning has brought hazardous intersections, traffic jams, noise, lost views, and a shrinking desert. Ten years ago we moved to this area because it was quiet, uncrowded and we had the privilege of enjoying daily sightings of quail, cottontail, coyote and javelina. I haven't seen any of these animal [sic] for over a year. Our desert view, for which we paid a premium, now consists of my neighbor's two-storied [sic] playhouse and the coyote and quails have been replaced with traffic noise, bells ringing from the nearby Catholic Church and fan noise from the high school ballparks. When will it end? Must every inch of this beautiful desert be covered by cement?<sup>457</sup>

Missing from such critiques, apparently, is any sense that the critic himself or herself is an agent in the area's transformation—that their own piece of the desert paradise contributed to its loss. Their calculation doesn't seem to include the concept that their home reduced someone else's mountain view and degraded the natural state of the land.

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<sup>456</sup> Letter from Bernard and Shirley Rubinstein, dated 9/25/2001. ICNEV file.

<sup>457</sup> Email from Susan Van den Heuvel, dated 1/9/2002. ICNEV file.

The mosque site was vacant very late into the build-out of the neighborhood. A related factor in conflict over ICNEV's project may simply have been the site's status quo. People grow accustomed to parcels as they stand, and can become upset with any change to them. We saw this in Voorhees, when opponents to that mosque said they preferred blighted structures to the site's redevelopment. When the status quo (particularly over a long period) is natural open space, however, change can be even more problematic—neighbors may come to see the open space as a public amenity, or even an untamed extension of their own property. I suspect that such perceptions played role in the ICNEV conflict. I also believe that view losses for neighbors would have played a role in any development of the site that did not match the surrounding residential scale. Still, when buying next to an open parcel in a rapidly developing neighborhood, it simply is not reasonable to expect that it will remain untouched. If open space and uninterrupted views are important to adjacent property owners, they should consider buying the parcel themselves.

On a final development related note just prior to the preliminary submission of the mosque proposal in 2000, the North East Scottsdale Property Owners Association (NESPOA) successfully made the argument that Via Linda should not be extended beyond the city limits into the neighboring municipality of Fountain Hills. That move, NESPOA claimed, would create a second commuter gateway into Scottsdale and offer an alternative route to the parallel, congested Shea Boulevard. It was a politically charged effort, with NEPSOA lobbying City Council members and engaging the General Plan process from which the concept emerged.<sup>458</sup> Because of NESPOA's effective communication with member POAs and individual property owners, projected traffic counts and development impacts along were fresh in the minds of neighborhood residents. The messaging that Via Linda already was managing maximum traffic

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<sup>458</sup> NESPOA history, *op. cit.*



capacities and could not bear the impact of expansion was absorbed by neighborhood residents and came into play in their response to traffic projections for the mosque.<sup>459</sup>

### Public Notice and Outreach Requirements

Charges of insufficient notice were repeatedly lodged by some mosque opponents. There are several roots to this misunderstanding. First, there had been many property ownership transfers in the neighborhood in the previous year because of the raging real estate market. As is common municipal practice, the city database was only updated periodically, so many owners of record were developers no longer connected with the neighborhood. As such, new owners within the bounds for legal notice did not necessarily receive notice in advance of the public sessions.<sup>460</sup> Further, there seemed to be a general misunderstanding about the distance limits for legal notice; requirements were not well clarified in public session. These factors certainly aren't unique to the ICNEV case, but they did add to misperceptions and conflict.

In terms of public outreach, when questions first were posed by the public regarding outreach requirements, the DRB chair should have clarified what was required of the applicant by law. Such a statement likely would have ameliorated perceptions that the applicant had not done enough to reach out to neighbors and negotiate mutually-agreeable project modifications. Instead, this clarification came in the last moments before the final vote on the proposal. At the same time, although the Muslim community's outreach efforts were insufficient in the eyes of a number of vocal opponents, ICNEV did conduct an more extensive outreach campaign than was legally required of them. In fact, I would argue (and my interviews support) that they were held to a higher standard for outreach than was normally required of applicants to the DRB at the time. The enhanced effort reduced tensions with most opponents who were willing to

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<sup>459</sup> Jones interview.

<sup>460</sup> *Ibid.*

engage it, but it did extend the review period, and, logically, the period in which the proposal festered in the press and around dining room tables.

### Structure of Board Leadership

The chair of the Scottsdale Design Review Board is a rotating member of the City Council. Elected officials are accountable to their voting constituents, unlike appointed lay members who are accountable to the laws and ordinances they are charged with administering. Although Council member and DRB chair Lukas supported the ICNEV application, she was certainly pressured, even threatened, not to. Such threats escalated an already tense process. During the review period, she met with parties on all sides of the mosque development question, and would have been susceptible to their persuasion. From the standpoint of objectivity, it seems ill-advised to have elected officials adjudicating development applications. They can bring local politics to bear on land use reviews which, ideally, are weighed under neutral codes and ordinances that protect the rights of the property owner and consider the needs of contesting parties.

## ***Leading Factors in Managing Conflict***

### Experience

The development experience of Mr. Ahmad and Mr. Jasser was invaluable; because of it, ICNEV did not make mistakes common to first-time mosque developers. Mr. Ahmad engaged the public planning process early and often and took advantage of the municipal resources available to him.

The planning staff's in-depth general experience and specific experience with religious land use proposals was critical. Because of Kurt Jones's past management of conflict and controversy, he was able to take the backlash from the mosque proposal in stride and treat it on par with any other proposal. Additionally, it was a level and neutral Jones who presented the application in public session rather than an ICNEV member. This is in contrast to the Voorhees case, in which an inexperienced Muslim community leader presented the proposal. Mistakes made by that speaker led the public to question his credibility. However, having a staff member who had facility with Scottsdale's codes and ordinances present the proposal communicated a degree of compliance achieved even before the application reached the Design Review Board.

### Hearing Management

Similarly, an informed and experienced legal staff was able to give sound advice to the DRB members on meeting management and applicable regulations, including the Religious Land Use and Institutionalized Persons Act. And, by having a figure of legal authority define the bounds of public comment at the start of each hearing, a legitimate framework was established for the sessions. Of course, the lawyer's opening statements did not stop some opponents from attempting to address issues beyond the purview of the board, but they did add strength to the chair's attempts to curtail inappropriate comments.<sup>461</sup> Another critical element of hearing management was the provision of immediate responses to questions from the audience and the board, as well as the correction of misrepresentations or mistakes made speakers. This ensured that the public record was accurate and that, as much as possible, misinformation did not escalate to process confusion or damage.

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<sup>461</sup> I was not able to listen to recordings of the Scottsdale hearings, and the minutes are free of overt reference to public comment based on fear and bias. However, written comments indicate that such sentiments were recognizable in the hearings. The fact was confirmed by members of the Muslim community, as well as the planner and developer I interviewed. And, in written response questions, Chair Cynthia Lukas referred to having allowed some statements of bias, despite having been advised not to by legal staff: "... that kind of testimony (as about 9/11) was kept to a minimum. However, I wouldn't say that I held tight reins on the testimony, as I believed strongly in allowing people to speak their minds because I felt airing certain feelings would help to heal them."

### Spirit of Compromise

The overall approach of the Muslim community was also leading factor in managing conflict in the ICNEV case. Although they acknowledged the geopolitical factors influencing public response, they took their neighbors' stated land concerns at face value and sincerely attempted to address them. The leaders did not perceive the community as victims or take the view that their project was opposed simply because they were Muslims. Instead, they made an honest attempt to hear their neighbors and respond to them. Even members who simply attended review board meetings tried hard to imagine themselves in the shoes of those most impacted by the project:

I can't say that if it was me I wouldn't feel like I [wouldn't want] a huge place of worship right behind my house, you know? And then couple that with what was happening [in the world]. It's a little scary. . . so I don't blame [the] neighbors for their concerns. [Even if 9/11 hadn't happened] I wouldn't be thrilled if somebody put a church right behind my house. I mean I don't want to deal with the traffic that's going to be associated with that. I just don't want a big structure like that behind my house.<sup>462</sup>

This position of empathy fostered a spirit of compromise which resulted in significant project modifications that met most of the neighbors' needs to a considerable degree. Arguably, this willingness to meet the neighbors and the city halfway, even more than halfway, resulted in a design that is at least acceptable to most parties.

### ***Factors Having a Mixed Influence on Conflict***

A number of factors seemed to have both increased and decreased conflict in the Scottsdale case, adding complexity to its analysis. In addition to the positive and negative influences of the interfaith coalition discussed in Part IX, several others are presented here.

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<sup>462</sup> Interview with ICNEV member Nadia Pasha, 6/1/2009.

## Public Engagement with Planning Process

Scottsdale's strong emphasis on citizen participation ensures that a healthy segment of the population is aware of planning goals and requirements for compliance, and is knowledgeable about and comfortable with engaging the public planning process. An engaged populace is vital to positive outcomes for long-term planning as well as immediate planning issues. But in specific cases, such as the mosque review, it also can pose challenges. A public that knows ordinances sufficiently well to question their rightful application can extend a review process and focus attentions on minutiae to the detriment of a project's big-picture impacts and outcomes. Of course, that focus also ensures a final product that is acceptable, even beneficial, to a greater number of neighbors and the municipality as a whole. This is not to suggest that members of the public who participated in the review process for the mosque always understood ordinances and codes. Clearly, there was an essential misunderstanding of allowable uses in the zone. Sometimes the most challenging opponents are those with just enough knowledge of ordinances and codes to gum up the works but who do not fully understand the context for or meaning of requirements. The public education requirements of planners and municipal officials is tremendous, particularly in conflictual land use proposals.

In terms of the scope of participation, the timing of DRB hearings both exacerbated and alleviated tensions. A number of written comments reference the 1pm weekday meeting times as a limit on their ability to participate, and several speakers said the same. On the other hand, given the tenor of some of the advance written comment, it seems that the inconvenient timing of the meeting prevented the delivery of some combative responses. I want to be clear that I am not advocating a limiting of public participation through such draconian means as inconvenient scheduling; I am simply pointing out that midday scheduling had a mixed influence on conflict management in the ICNEV case.

### Expectations Set by Guidelines

Although there were not specific design guidelines in place for houses of worship at the time of the ICNEV proposal, the standing guidelines and covenants, conditions and restrictions in place for the neighborhood's component property owners associations were sufficiently specific to set high expectations for what should be required of the mosque proposal, or any new proposal on the development site. Homeowners and developers who had met the threshold of these guidelines and CCRs expected parity in compliance, even if that parity was not necessarily an appropriate for the site plan or the aesthetics of the mosque. Additionally, the rigorous expectations created for conformity by the guidelines have resulted in a virtual architectural monoculture in Scottsdale. There is little room for innovation or the exploration of a contemporary local design. On the other hand, the specificity of the guidelines did control design-related conflict to a degree. There was a limited range of design possibilities through which project opponents could push the project, and a limited range of responses that the Muslim community could make to that pressure. A finite palette of options naturally limited acceptable modifications.

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### **CONCLUSION**

At the time of my field research, the Islamic Center of the North East Valley had been open and functioning in the East Shea area for nearly four years. Planner Kurt Jones and Naser Ahmad reported that there had been no complaints about the facility and that the Muslim community had reached a point of quiet stasis with the surrounding neighborhood. The opponents with whom I met reported that the mosque has simply become a background element for them, barely noticed as they go about their lives—and decidedly less disruptive than the nearby public schools and playing fields. One interviewee even leaned toward assessing the finished product

as attractive. Still, I did have a sense that open wounds remain among owners of adjacent parcels—all but one of those I was able to contact refused to speak with me; the last would speak only off-record. This was deeply disappointing to me; their side of this story surely would have illuminated important aspects of the review process and provided valuable insights for other faith communities, neighborhoods and municipal officials.

Although a number of important lessons from ICNEV have already been described in the conflict analysis section, it is useful to reiterate what I think is the key Scottsdale instruction for all stakeholders in Islamic Center developments: communicate early, often and directly. For municipal officials, that means educating the public on applicable ordinances and codes, the rights and responsibilities of the applicant and neighboring property owners, and appropriate discourse in the review process. For neighbors, it means reaching out to the faith community and the municipality with clear statements of concern and actionable recommendations for meeting them. For the faith community, the need for strong communicating is best described by former ICNEV board member Azra Hussain:

You talk to your neighbors and you keep talking to your neighbors until each one of you sees [the] other as human beings. We as a community did not want our neighbors to think of us as them and we didn't want us to think of our neighbors as them. We're all a community. . . I would recommend to every group that wants to go out and build a mosque, go and make sure you're talking to people around you. Because those are going to be your neighbors, they're going to be your neighbors for a long time. And that's the first thing you need to work on. And so to me it was as important to talk to them and work with them as it was [for us to] build. . . And I'm glad that we did. [We] board members took a lot of time to meet with the neighbors. And one on one. Not to the city, not with anyone mediating, we said you meet us, we'll sit and chat with you, you tell us what the deal is. . . [If it were your home, ] wouldn't you like [the faith community] to come to you and say . . . [we're] going to stick this in your back yard, what do you think? And [you should] at least [try to] see [it] from their point of view. . . <sup>463</sup>

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<sup>463</sup> Hussain interview, *op. cit.*

The Scottsdale mosque proposal had undergone sufficient pre-hearing assessment and modification that it could likely have been approved in the first hearing. Public response led to an extended, frustrating process for the Muslim community and the neighborhood. The higher standard for public outreach to which ICNEV was held did result in significant modifications to the project. While attractive and well-designed, the final product as it stands is a rather bland reflection of its architect's original vision. But for the community as whole, the final product seems to be a reasonable compromise, for now. And the way has been paved for more effective conflict management strategy come the construction of the dome and minaret. With those architectural elements in place, I believe that the dream of a mosque that looks and feels like Scottsdale will have been realized.

Turning from the drama of Voorhees and the negotiations of Scottsdale, in the next chapter I will describe the contrast case for this study—The Islamic Center of Savannah, Georgia. For a variety of reasons that will be elucidated as the chapter unfolds, there was very little conflict in the review process for this suburban mosque. And, as the reader will discover, the adage “location, location, location” has real meaning in Islamic Center development.



## CHAPTER VI

### THE ISLAMIC CENTER OF SAVANNAH, SAVANNAH, GEORGIA

#### INTRODUCTION

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The city of Savannah is located at the northeastern-most edge of the state of Georgia, nestled among the tidal marshes and barrier islands that form a portion of the US Intracoastal Waterway.

It is the seat of Chatham County and the primary port of the Savannah River, across which lies Jasper County, South Carolina. The city is serviced by interstates 95 and 16 and the seasonally-bustling Savannah-Hilton Head Airport (see Map 6.1). Consistently named one of America's Top Ten US Cities to visit,<sup>464</sup> its highways and airways deliver millions of visitors to experience the beauty of its historic architecture and street plan and sample its famous southern hospitality. Savannah's downtown, the first capital of colonial and republican Georgia, constitutes the nation's largest National Historic Landmark District and has been popularized in countless novels and films. Such strong emphasis on history and tourism might lead one to imagine the city as quaint and ossified, but it is anything but. Its bustling deep-water port, one of the largest and most modern in the southeast, ensures a surprising degree of vibrancy and innovation in Savannah.<sup>465</sup> The Islamic Center of Savannah was developed against this backdrop, expanding an already rich and varied cultural landscape.

Like Savannah itself, the 2001-2005 development review process for the Islamic Center is more complex an example than one expects. The facility had its first home in a former single-family

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<sup>464</sup> Named by *Conde Nast Traveler* magazine.

<http://www.savannahga.gov/cityweb/SavannahGaGOV.nsf/mainportal/visitors?opendocument> page. Accessed 5/3/2010.

<sup>465</sup> Preston Russell & Barbara Hines. *Savannah: A History of Her People Since 1733*. Savannah: Frederick C. Beil, 1992. Page xi.



residence, and received national headlines when it was firebombed in 2003. I first considered it as a case study at that time, expecting to tell a “clash of cultures” tale of Muslims in the Bible Belt. However, my initial, cursory examination revealed an outpouring of citizen support for the Muslim community and an apparently conflict-free public process for the redevelopment of the Islamic Center. I concluded from my exploratory interviews that the renown of the Muslim leadership—esteemed physicians and long-time Savannah residents—was in large part the reason for this surprising juxtaposition. And, frankly, I also assumed that the case would not be that interesting. However, when several municipal officials would not consent to being recorded and then asked to review drafts of my chapter, I realized that something more curious would emerge. My deeper research and interviews revealed more compelling reasons for a smooth review process: wise site selection in a transitional neighborhood; proactive outreach to the surrounding community; a complex, confusing local regulatory environment that allows substantial leeway in zoning decisions; and, most importantly, applicants with a wide-reaching network that afforded them access to resources and expertise essential to success of their development review. This configuration of factors suggested that little of the Savannah story would be generalizable to other Islamic Center developments. In the end, however, a number of important themes from Savannah might be considered by and replicated in other Muslim communities.

To contextualize the development of the Islamic Center of Savannah, I first will offer a very brief description of the city’s development history and its demographic evolution. Then, I will examine the city’s planning culture. A short history of Savannah’s Muslim community will follow. Turning to the specifics of the mosque proposal, I will describe the facility’s neighborhood and site and then examine the details of the public review process. Finally, I will analyze outcomes and propose lessons of value.

Savannah is one of America's oldest planned cities, having been laid out in 1733 by General James Oglethorpe. Following his illustrious military career, the general became a member of the British parliament. There he gained renown for his efforts toward prison reform and the humane treatment of the poor. Contemporary British society viewed debtors as unreformable criminals and sent them to prison. Oglethorpe recognized the futility of this punitive approach and sought to return the poor to industry via state-provided opportunity. He proposed a social experiment in which he would take a group so-called "worthy poor" to settle a new colony in America and make a fresh start. The timing of his proposal was perfect—the British were seeking a buffer

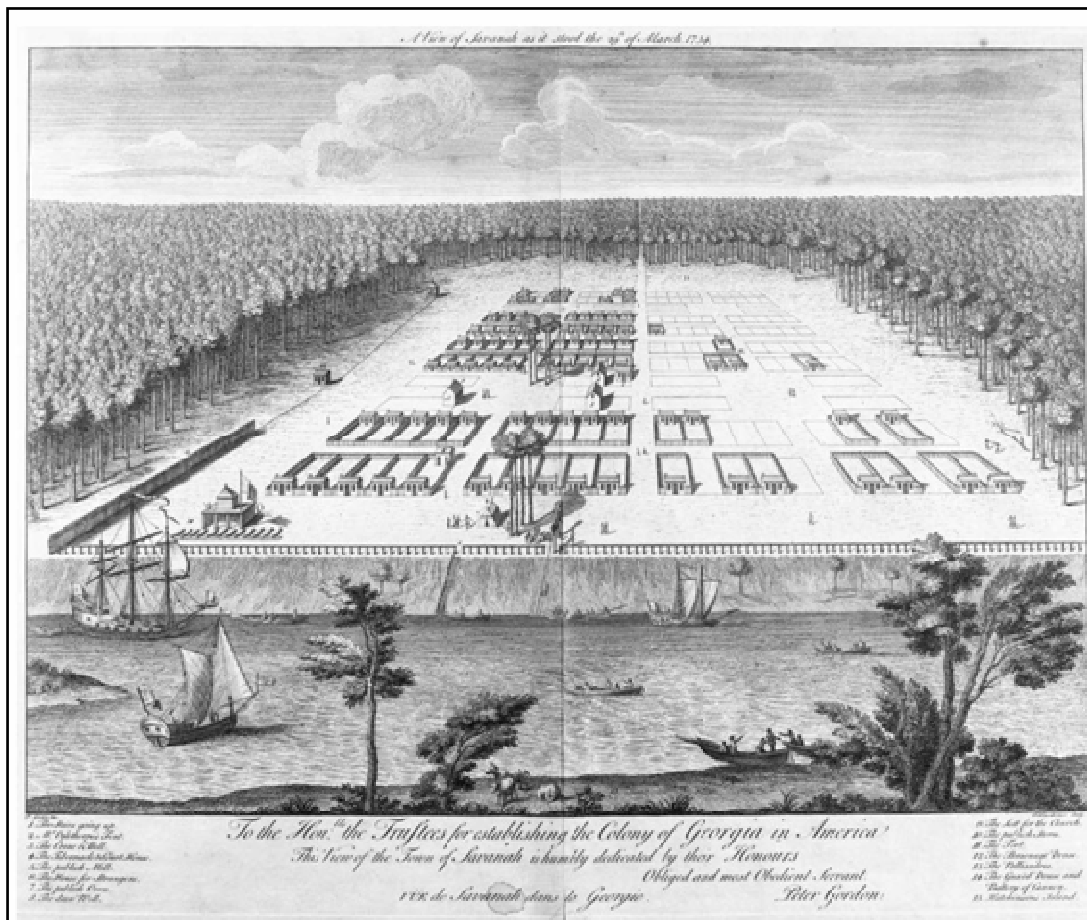


Figure 6.1 Oglethorpe's Plan for Savannah. Source: Civil Engineering, December 2007, Vol. 77 Issue 12, page 39.

between their southernmost colony of Carolina and hostile New Spain. Oglethorpe was granted a charter for the colony in 1732, and Georgia was born. He selected a bluff along the Savannah River to establish the first town, Savannah.<sup>466</sup>

Oglethorpe's plan for the city was the physical manifestation of his egalitarian ideals. The town was divided into four wards, each focused around a common open space. Each housing lot around the square was of equal size, and space reserved for public ovens and mills.

Participatory governance played out in regular gatherings in the common space, which also served as a place of retreat should the town come under attack. Urban historian Brett Hansen notes most colonial towns in America were arranged hierarchically within defined borders and around a single, central town square. By contrast, Oglethorpe's decentralized, borderless design for Savannah allowed for easy replication as the population grew.<sup>467</sup>

Also unusual in Colonial America was Oglethorpe's insistence on openness. As his town grew physically, so did the diversity of its people and their religious persuasions. One must hastily add that his was an 18<sup>th</sup>-century sense of diversity—he excluded lawyers, whom he despised, and Catholics, whom his Anglican sponsors banned. Significantly, however, he welcomed Jews, forbade slavery and required his colonists to trade fairly with neighboring Native Americans.<sup>468</sup>

Alas, Oglethorpe's egalitarian sensibility did not survive his departure from the colony in the mid-1740s. Residents convinced the trustees that slavery was necessary to compete with the slave-based economies of neighboring colonies. The labor-intensive cotton industry that slavery would support brought Savannah immense wealth, and through the 1850s, Oglethorpe's plan was expanded with the addition of twenty squares and accompanying residential and commercial uses. Fine residential, commercial, civic and religious structures were built to rival the capitals of the north and Europe, and with them Savannah's still-standing

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<sup>466</sup> Brett Hansen. "Shaping the Colony: The Savannah City Plan." *Civil Engineering*, December 2007, Volume 77 Issue 12. Pages 38-39.

<sup>467</sup> *Ibid.*

<sup>468</sup> *Ibid.*, and Russell & Hines, *op. cit.*, page 20.

reputation for refinement and gentility. So beautiful was the city, in fact, that Union General Sherman spared it on his 1854 March to the Sea, delivering this single southern city from the ashes of the Civil War.<sup>469</sup>

Savannah may have survived Tecumseh Sherman and Reconstruction, but it could not survive the boll weevil and the Great Depression. Like much of Georgia, Savannah had done little to diversify its economy. When cotton crops were destroyed by the beetle in the 1920s, the city collapsed. It would not recover until after the Second World War,<sup>470</sup> when the local economy was expanded by military installations and diversified manufacturing and shipping sectors. However, the desperation of those years preserved much of Savannah's historic fabric, since Savannah was "too poor to destroy herself."<sup>471</sup>

The city's renewed prosperity, along with the national pursuit of modernity, drove Savannah to pursue urban renewal programs in the 1950s and 1960s. Oglethorpe's squares and surrounding historic fabric were threatened by roadways, civic centers, new housing and the like. Citizens banded together to form the Historic Savannah Foundation and save the city once again. Today, Oglethorpe's original plan constitutes much of the Savannah's downtown area, which is protected in its entirety as a National Historic Landmark and local landmark district. Savannah's preservation success story is referenced as a gold standard across the nation, both for its retention of historic architecture and urban fabric and for public/private collaboration for economic revitalization. Most notably, the Savannah College of Art and Design has assumed ownership of a wide range of commercial, residential and institutional structures and given them new life as academic halls, performance spaces and student housing.

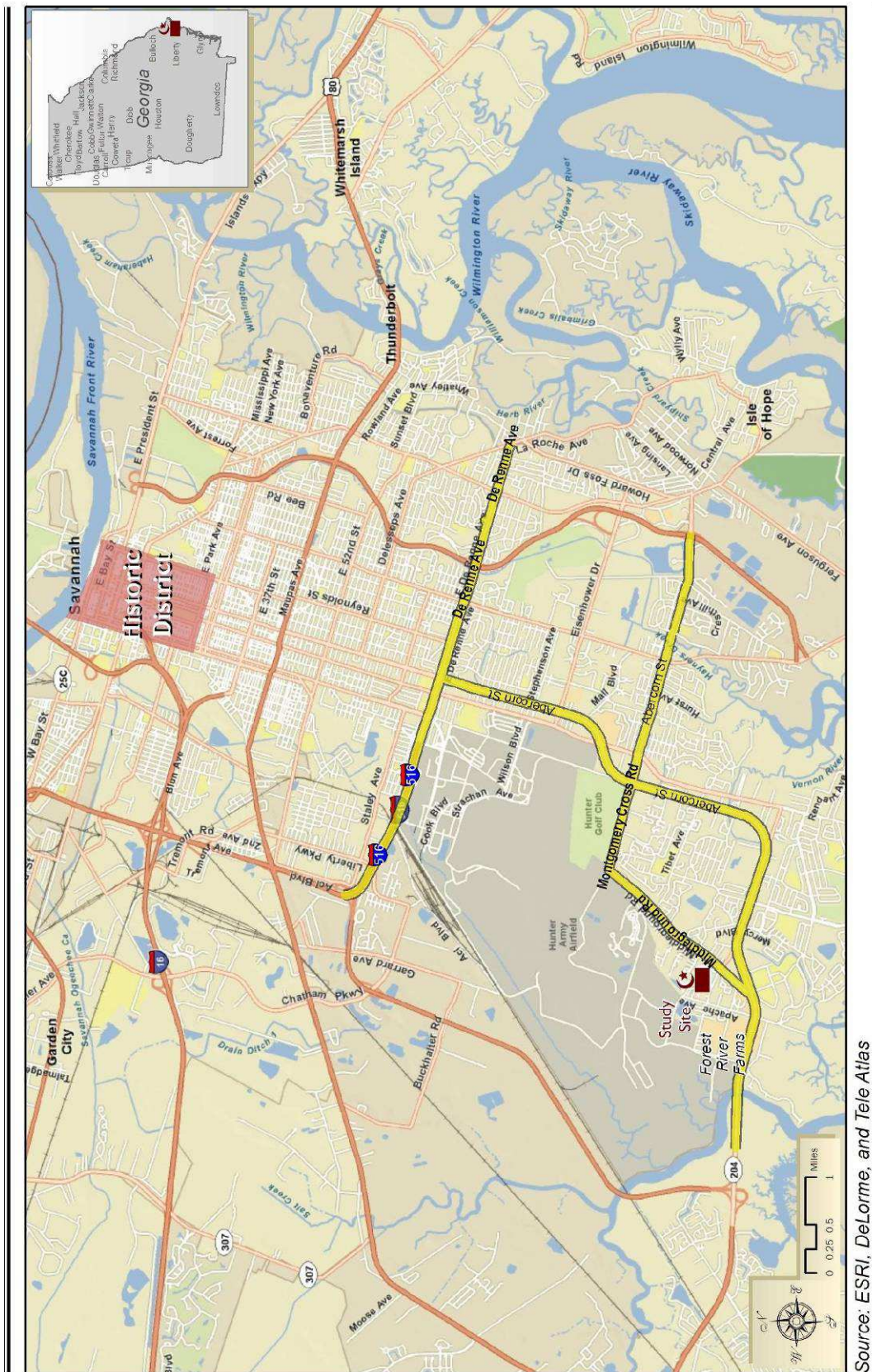
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<sup>469</sup> Website of the Savannah Visitor Information Center, "Savannah History" page.  
<http://www.savannahvisit.com/media/savannahs-history>, accessed 7/16/2010.

<sup>470</sup> *Ibid.*

<sup>471</sup> Russell and Hines, *op. cit.*, page 176.





Source: ESRI, DeLorme, and Tele Atlas

Map 6.2 City of Savannah, Georgia, locating study site.

As Oglethorpe intended, his grid plan was replicated as Savannah developed southward (away from the river) in the 19<sup>th</sup> and early 20<sup>th</sup> centuries (see Map 6.2). The dense, townhouse development of the historic district relaxes as the grid proceeds south, replaced by open lot development typical of the turn of the last century. Homes continue to be large in scale, but single-family residences are mixed with purpose built, ornate duplexes and multi-family structures. Today, these historic neighborhoods are commonly populated by SCAD students as well as multiple families. Beyond this first southern expansion, early 20<sup>th</sup>-century single-family neighborhoods stretch; grand Colonial Revivals rise on large lots along live-oak shaded streets. Beyond DeRenne Avenue (also known as Interstate 516), the grid dissolves into an irregular street pattern more typical of suburban neighborhoods.

## **PART II: SAVANNAH'S PLANNING CULTURE**

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As in most American cities, the framework for regulating Savannah's historic district and the urban area that developed beyond it was established in the late 1950s and early 1960s. Although an early form of zoning followed quickly on the heels of the *Euclid* decision in the mid-1920s,<sup>472</sup> it wasn't until 1955 that the Metropolitan Planning Commission was formed to create a multi-jurisdictional master plan for the City of Savannah and Chatham County. That document laid the foundation for the city's zoning code, adopted in 1960, and the county's, adopted in 1962.<sup>473</sup> It would seem, however, that departure from this unified approach was swift. Quickly, city and county codes and ordinances, processes and procedures, diverged from their common root, resulting in jurisdictional and process confusion for all parties to development—applicants, review bodies and planning staff. Such an evolution is not at all atypical in Georgia, which, as a

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<sup>472</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926). Heard before the Supreme Court, *Euclid* was the first significant case regarding the relatively new practice of zoning. Its support of the practice of local land use regulation resulted in the widespread establishment of local zoning ordinances nationwide.

<sup>473</sup> Undated article on the history and functions of the Savannah Metropolitan Planning Commission, accessed via the MPC website, welcome page, 5/3/2010. <http://www.thempc.org/documents/MPC/Layers%20of%20the%20MPC.pdf>



hybrid Dillon's Rule/Home Rule state has had significant struggles over the control of land use planning since the 1950s.

### ***Background: Georgia's Land Use Regulatory Structure***

As background,<sup>474</sup> the US Supreme Court established in *Village of Euclid v. Amber Realty Co.* that zoning laws were a valid exercise of a state's police power and were not a violation of due process as extended by the 14<sup>th</sup> Amendment of the Constitution.<sup>475</sup> The Georgia State Supreme Court did not agree, however, and, while assuring compliance with the federal decision, held that zoning power is not an inherent police power of the state and must be extended by an expressed Georgia Constitutional grant.<sup>476</sup> A number of state constitutional amendments were quickly proposed, granting both home rule and general zoning authority to both cities and counties. Then, in a critical 1969 State Supreme Court case, *Johnston v. Hicks*, it was determined that the General Assembly of the state legislature had no authority to regulate in zoning and planning.<sup>477</sup> An amendment to the state constitution reflected this decision. Two subsequent re-writes of the state constitution, in 1976 and 1981, reflect the ensuing struggle to determine a balance between local determination and state accommodation of unfettered local development and private property rights.<sup>478</sup>

Although general planning and zoning authority had been withdrawn from the state assembly, a provision that survived Georgia's constitutional rewrites does allow some room for interpretation: "[t]he General Assembly shall have the authority to provide restrictions upon land use in order to

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<sup>474</sup> This paragraph is informed by the work of graduate planning students in a combined Georgia Institute of Technology–City and Regional Planning class and a Georgia State University–College of Law class. They completed fifteen reports on growth management issues during the Spring 2007 Semester; I particularly focused on the document entitled “How to Fix Georgia's Planning and Zoning Enabling History,” and its incorporated article by Karen Shelley (“History of Zoning in Georgia”). The articles are posted at <http://georgiaplanning.org/students-work/2007-gt-student-project-reports/>; accessed 5/3/2010.

<sup>475</sup> *Village of Euclid v. Amber Realty Co.*, 272 US 365 (1926).

<sup>476</sup> *Commissioners of Glynn County v. Cate*, 183 Ga. 111 (1936).

<sup>477</sup> *Johnston v. Hicks*, 225 Ga. 576, 579 (1969).

<sup>478</sup> Shelley, *op. cit.*, n.p.

protect and preserve the natural resources, environment and vital areas of the State.”<sup>479</sup> The provision is vague, and the result of this planning evolution has posed real challenges for Georgia. Across the state, a wide-range of local land use laws, zoning codes, and planning procedures has resulted in inconsistencies from municipality to municipality and even within civic jurisdictions like Savannah. The impact on regional planning is tremendous—inter-municipal cooperation is nearly impossible given vast differences in codes. Further, local comprehensive plans were not mandated by the state until 1989 and are only required to be updated every ten years. As a result, for the most part, smart growth and New Urbanist thinking has not yet been incorporated into Georgia’s planning.<sup>480</sup> Even if such concepts are captured on paper in Savannah’s comprehensive plan, the zoning and planning codes in that city are not required to be in compliance with it, rendering the document virtually forceless.<sup>481</sup>

### ***Savannah’s Particular Land Use Issues & Functions***

In addition to statewide planning challenges, Savannah has peculiar issues that can complicate development matters. Neither the city nor the county zoning code has been systematically updated since its adoption in the early 1960s. Instead, modification has happened via amendment, accreting 125 zoning districts, many of which are contradictory in boundary and purpose, along with nearly 700 pages of regulations.<sup>482</sup> The system is so haphazard and cumbersome, in fact, that zone definitions are memorialized both in the ordinance and in

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<sup>479</sup> Shelley, *ibid* and Ga. Const. of 1976, art III §8, ¶7.

<sup>480</sup> The Atlanta Regional Planning Commission. “The Second Generation of Georgia Planning,” posted to <http://landmatters.wordpress.com/2009/08/03/the-second-generation-of-georgia-planning/> on 8/3/2009. Accessed on 5/5/2010.

<sup>481</sup> Charlotte L. Moore, AICP, Director of Special Projects, Chatham County-Savannah Metropolitan Planning Commission. Follow-up telephone interview by the author, 5/3/2010.

<sup>482</sup> MPC, “A Citizen’s Guide to Understanding the Unified Zoning Ordinance Program (February 2009).” Accessed on 5/3/2010 at [http://www.thempc.org/UnifiedZoning/reports/UZO%20Brochure\\_February%202009.pdf](http://www.thempc.org/UnifiedZoning/reports/UZO%20Brochure_February%202009.pdf).

There is hope for Savannah. The MPC completed a new comprehensive plan in 2006, which was adopted by the city and the county. Currently the city and county zoning ordinances are being combined, rationalized and linked to the comprehensive plan through the Unified Zoning Ordinance Project, expected to be completed in 2010.

separate, complex supplementary use tables. This multiplicity is confusing for property owners, developers, and, by their own admission, for planning staff.<sup>483</sup>

Purview is another matter that contributes to land use complexity in the city of Savannah and Chatham County. From its inception the Metropolitan Planning Commission was intended as a joint city-county agency and the principal planning body for the two municipal entities.<sup>484</sup> As will be discussed, this cooperative vision seems not to have been realized fully, particularly regarding purview. The MPC was structured with a professional staff to carry out day-to-day planning functions and an appointed board to adjudicate development applications. However, the MPC's power is advisory only, with final approving authority assigned to elected city and county governing bodies.<sup>485</sup>

The MPC works in tandem with the city's Department of Development Services, which manages the nuts and bolts of development projects, including site plan review, permitting and compliance.<sup>486</sup> However, matters involving use variances, special use approvals and rezoning are less clear. According to the instructions provided on Chatham County zoning application,<sup>487</sup> the MPC is the lead agency for zoning actions. But a city board, the traditional board of zoning appeals, seems to have the same jurisdiction within city boundaries under certain circumstances. Exactly when the MPC reviews a city zoning application and when the ZBA does remains unclear to me. After attempts to clarify the matter in interviews with two MPC planners, a retired Director of Development Services for the MPC and a standing MPC commissioner, as

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<sup>483</sup> Moore, call 5/3/2010 and email to author 5/17/2010 and the website of the Unified Zoning Ordinance process: <http://www.unifiedzoning.org/>, accessed 7/6/2010.

<sup>484</sup> Home page of the MPC, accessed 5/6/2010. <http://www.thempc.org/index.html>

<sup>485</sup> Email from Charlotte Moore, 7/12/2010.

<sup>486</sup> MPC website, Development Services page:

<http://www.thempc.org/Development/DevelopmentServices.html>Instructions portion of site plan application; accessed 7/7/2012 and City of Savannah's site plan application, accessed 7/6/2010 at:

[http://www.savannahga.gov/spr/SPRGuide.nsf/DocID/7AE97F5FD9D2C884852572040064A7D0/\\$FILE/Site\\_Plan\\_Application-City\\_2009.pdf](http://www.savannahga.gov/spr/SPRGuide.nsf/DocID/7AE97F5FD9D2C884852572040064A7D0/$FILE/Site_Plan_Application-City_2009.pdf)

<sup>487</sup> Chatham County Application for Rezoning, Zoning Text Amendment or Special Use, 3/31/2009, page 6; and [http://www.savannahga.gov/spr/SPRGuide.nsf/DocID/CB354D022D56AB0985256A1C00639D03/\\$FILE/City%20ZBA%20Application\\_2010.03.18.pdf](http://www.savannahga.gov/spr/SPRGuide.nsf/DocID/CB354D022D56AB0985256A1C00639D03/$FILE/City%20ZBA%20Application_2010.03.18.pdf)

well as my careful review of the MPC and the city websites, I could determine only that purview is variable; I was not able to identify the triggers for jurisdiction. It seems as if, in general, the MPC has purview over rezoning applications and the ZBA has purview over special uses and use variances. Both can review design variances as part of site plan review (that is, setbacks, lot coverage, roof heights, et cetera).<sup>488</sup> The Islamic Center development illustrates how these general guidelines do not always hold true.

The issue of agency purview is clearly sensitive and contentious. Savannah's city attorney, who is in his mid-eighties and has served in his position for more than forty years, refused to speak with me when I sought clarity. Through my staff contact at the MPC, he expressed that Savannah's situation is a result of vagueness in the state enabling legislation, and that he would not address the matter further with me.<sup>489</sup>

Finally, the most perplexing limitation of the MPC is its inability to ensure compliance with its decisions. Because the commission's official role is advisory, it does not issue permits for the work it approves, nor does it even see final construction plans. The MPC and its staff have no means to enforce rulings or conditions placed on its approvals. Instead, city and county code inspectors see developments through to completion. Deviations from MPC approvals, therefore, are made at the discretion of non-agency staff.

Given a non-binding comprehensive plan, an overly complex zoning ordinance and confusing purview over zoning, it would seem that opportunities would be rife for problematic land use decisions. MPC staff report, however, that zoning law suits are extremely rare in Savannah, and that when conflicts do arise they often are addressed in private negotiation with applicants.<sup>490</sup>

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<sup>488</sup> Moore email, 7/12/2010.

<sup>489</sup> In a 4/29/2010 telephone call to Attorney Blackburn's office, I was directed to send an email. That email was never acknowledged, but when I next spoke to my staff contact at the MPC, Charlotte Moore (5/3/2010), she delivered the message from Blackburn.

<sup>490</sup> Moore, call 5/3/2010.

They characterize Savannah's planning culture as collaborative, with an emphasis on proactive conflict management. The experience of the staff—with development generally and the local review process specifically—helps them to anticipate problematic aspects of applications and address them in early stages of development.<sup>491</sup> Even so, one also can easily imagine that the leeway inherent in the structural complexity of Savannah's planning environment might also work in favor of an applicant. This, as I will demonstrate, was the case with the Savannah mosque development.

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### PART III: THE MUSLIM COMMUNITY IN SAVANNAH<sup>492</sup>

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The Islamic Center of Savannah is stewarded by a board of directors under the leadership of chairman Dr. Mohammad A. Masroor and vice chairman Dr. Masood Ahmad. Dr. Masroor arrived in Savannah in 1976 and opened his own medical practice in 1980; in 1989 Dr. Ahmed joined the practice. At that time the Muslim community was quite small, with Friday afternoon *jum'ah* (congregational) prayers attended by perhaps 30 individuals, mostly men. The faithful gathered at Savannah's first mosque, Masjid Jihad, on the largely residential East 34<sup>th</sup> Street near Abercorn, close to the historic core of the city. Still located in the former residence in which it began, Masjid Jihad has its roots in the African American community and was founded as part of the Nation of Islam movement in the 1960s. The community converted to mainstream Sunni Islam in the early 1970s and began welcoming immigrant Muslims as they arrived in Savannah. Their numbers swelled the congregation, particularly with young families.

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<sup>491</sup> Interview with MPC staff planners Charlotte Moore, Director of Special Projects and Gary Plumbley, Development Services Planner. 4/11/2008.

<sup>492</sup> Information in this section is drawn from the author's interview with Drs. Mohammed A. Masroor and Masood Ahmed, 4/11/2008.

By the early 1980s, the demand for educational and social programs could not be met on-site. A former public school building was located on nearby Florence Street; Dr. Masroor gave the money for Masjid Jihad to purchase the building and use it for programming. The intention was to help the mosque, but the board soon realized the disadvantage at which the mosque had been placed by the purchase. Although Masjid Jihad did have federal 501(c)(3) tax-exempt status, it had not applied to the City of Savannah for local property tax exemption. As a result, the school property was subject to the significant property taxes levied in Savannah's historic district. In addition, the significant abatement and rehabilitation costs for the historic structure prevented the community from taking advantage of the property. To escape the escalating costs, the mosque sold the parcel and used the proceeds for needed improvements at the 34<sup>th</sup> Street facility. From this experience, Dr. Masroor learned important lessons that would serve him and his colleagues later: (1) the critical importance for non-profits in Savannah to secure local property tax exemption, and (2) that the construction and maintenance costs in the city center, and particularly within Savannah's historic district, likely were beyond the means of the Muslim community.

Around 2000, as often happens when indigenous and immigrant-based Muslim communities meld, differences of opinion arose regarding governance. The doctors and other like-minded members felt that Savannah's Muslim community had reached sufficient size that having arguments on these grounds was neither necessary nor fruitful, and instead focused their energy on establishing a second mosque and Islamic Center.<sup>493</sup> Dr. Masroor and Dr. Ahmad transferred their successful medical partnership into a non-profit leadership collaboration, establishing a separate seven-member administrative board and applying for 501(c)(3) not-for-

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<sup>493</sup> Although to non-Muslims such a division would suggest fractious relations among Savannah's Islamic community, this is not at all the case. Members of Masjid Jihad and the Islamic Center of Savannah frequently attend prayers at both locations and are equally welcome. It is typical for a Muslim to attend whatever mosque he or she is nearest at prayer time, and having two locations in Savannah makes communal prayer convenient for greater numbers of the faithful.

profit status for a new sister Muslim community.<sup>494</sup> Freed of the tethers of a downtown building, the board could be open to many real estate options—locations, new construction, building rehabilitations; they were even open to reusing existing religious structures. Lot size for asking price was the primary consideration, with the goal of accomplishing adequate space for programming needs, as well as sufficient parking. These needs naturally focused their attention on commercial and mixed-use districts with larger available parcels, and by default eliminated the problems of developing in primarily single-family residential neighborhoods that the faith communities in Voorhees and Scottsdale experienced. The doctors reported that they did not actively consider the zoning of a parcel or the likelihood of receiving approvals to establish a mosque on a particular lot. Other than having had their own homes built, Dr. Masroor and Dr. Ahmed did not have any development experience and therefore were mostly ignorant of what would be required from a planning perspective.

A house and accompanying acreage was for sale in the Forest River Farms Subdivision, located at the southern edge of the city. It would prove a perfect match in terms of space and zoning flexibility. And, as it turned out, the lots belonged to the family of the head nurse in the doctors' office. This would turn out to be the first of many fortuitous overlaps in the Savannah development process.

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#### **PART IV: DEMOGRAPHICS OF THE ISLAMIC CENTER OF SAVANNAH<sup>495</sup>**

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The new Muslim association that grew out of the downtown faith community organized under the name Islamic Center of Savannah (ICS). What follows is a demographic snapshot of the

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<sup>494</sup> The 501(c)(3) status for the Islamic Center of Savannah was granted by the IRS in 2002.

<sup>495</sup> All information in this section drawn from the Masroor and Ahmed interview.

group in April 2008 as reported by Drs. Masroor and Ahmed, including some of their projections for its growth.

The population of the ICS community is more than half immigrant-origin—mostly Arabs, Pakistanis and Indians. Perhaps 15 percent are African Americans. Seventy-five to one hundred families are affiliated with the masjid, and roughly sixty men and ten women attend the congregational *jum'ah* prayer on Friday. The numbers rise expectedly at Eid celebrations, which in the past have drawn about 250 attendees. Throughout a usual week, four to five members attend *maghrib* (sunset) prayers and fifteen to twenty attend 'isha (nightfall) prayers. These prayers are normally exclusively attended by men, since the evening hours are generally occupied by childcare for Muslim women. This is a testament to the youth of the community's members: the majority are between the ages of 20 and 40, and are raising children. About 40 percent of the overall community is in the professional class—doctors, lawyers, architects, professors and the like. The doctors assess the political and social involvement of their fellow members as “low-key,” but Dr. Masroor commented, “. . . I only wish more of us were involved politically in the city affairs, state affairs, government—we all should be.” However, as will be demonstrated, the doctors themselves are very much public figures. They have a large, reputable medical practice and, because of their civic and volunteer engagement are recognized and respected to many Savannians.

The doctors anticipate that the mosque's population will grow once the new center is open and functioning. Families, they note, are drawn to proper facilities that create a sense of community for children. The new center is designed to accommodate at least 300 for prayers, and they expect to see about 100 *jum'ah* worshippers regularly.



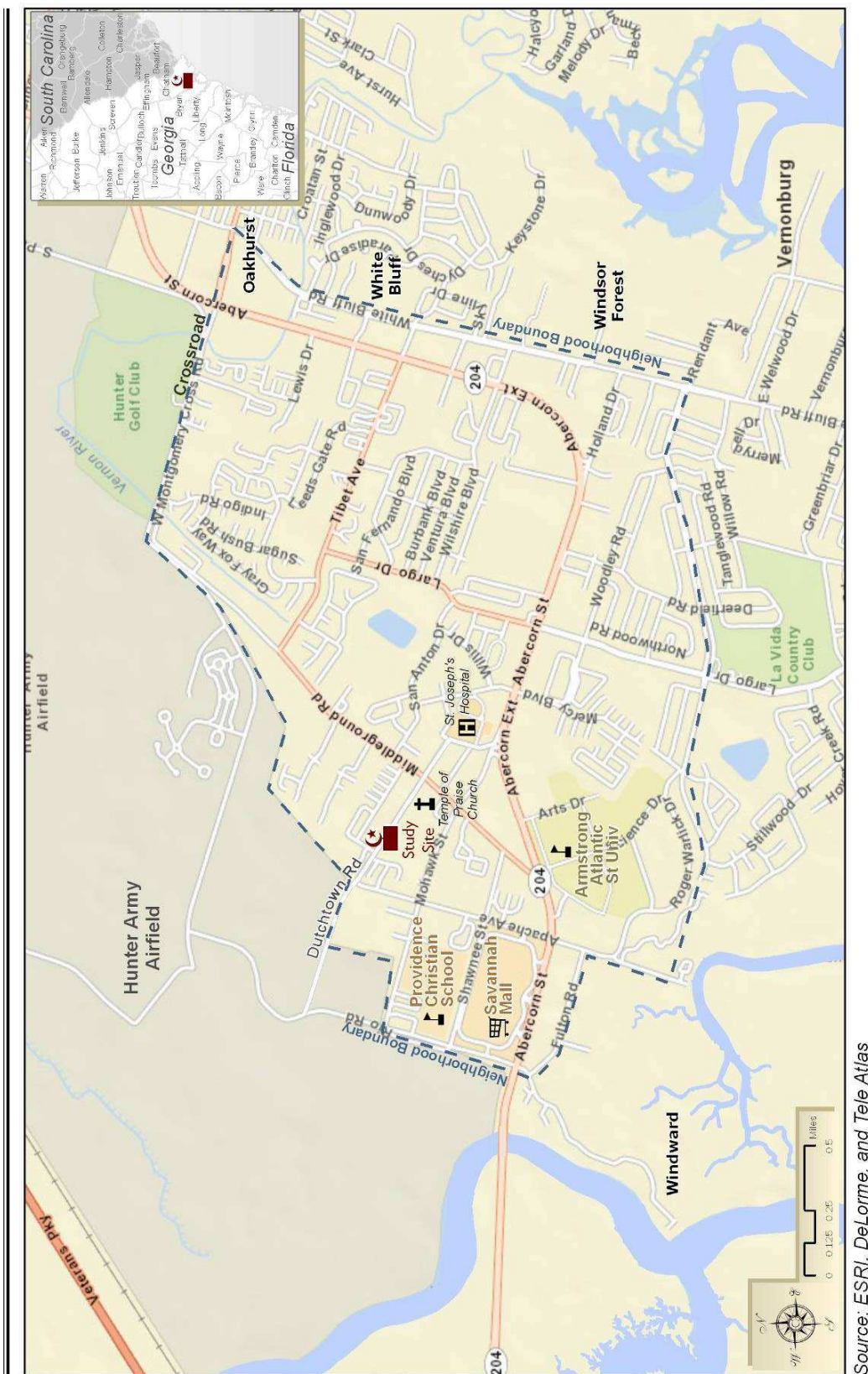
The width of Savannah narrows as one travels south of DeRenne Avenue/Route 561 (see Map 6.2). In that portion, the city is bounded on the west by Hunter Army Airfield and on the east by the wetlands of the Intercoastal Waterway. Known as the city's Southside, the district takes on a distinctly mid-twentieth century suburban character. It is connected to the historic core by Savannah's main artery, Abercorn (also known as state route 204). Whereas in old Savannah Abercorn is one of the two boulevards to host Oglethorpe's squares, here it is lined with commercial plazas, large shopping malls and chain motels. Behind these, modest single-family dwellings are situated on smaller lots, and neighborhoods take on curvilinear forms and cul-de-sacs. Below the next major east-west crossing, Montgomery Cross Road and to the east of Abercorn is an area known as the Forest River Farms Subdivision, the neighborhood now host to the Islamic Center of Savannah at 1030 Dutchtown Road (see Map 6.3).

The 1945 surveyed boundaries for the subdivision do not match the boundaries that were used for it in documents and public hearings related to neighborhood rezoning or rezoning for the study site. To bridge the differences, one must understand the neighborhood in its context—as an integral part of the larger area bounded (roughly) by Montgomery Cross Road, White Bluff Road, Windsor Road, and the Hunter Army Airfield. For the purposes of my analysis, I will focus on the area.

Until the late 1960s, when Forest River Farms was annexed by the city, the area was an unincorporated district consisting primarily of mini-farms. Lots were divided with 100-foot frontage and most owners held several to allow for small-scale agriculture.<sup>496</sup> After annexation, farming slowly dwindled and single-family residential use expanded. The district was zoned by

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<sup>496</sup> Author interview with William B. Saxman, retired Director of Development Services for the City of Savannah. 4/10/2008.



Source: ESRI, DeLorme, and Tele Atlas

Map 6.3 Southside of Savannah, Georgia, including approximate boundaries of Forest River Farms, as well as the major institutional and commercial uses in that neighborhood.

the city for a density of six dwelling units per acre, but exceptions to the designation were approved almost as soon as the zoning was adopted. In the late 1960s, as commercial development rapidly expanded along Abercorn near Forest River Farms, developers acquired collections of the mini-farm lots and requested zone changes on a parcel-by-parcel basis. The Quail Hollow townhouse development, just north of the study site, was among the first, built at a density of 25 units per acre.<sup>497</sup>

Higher density residential development occurred alongside institutional development in the neighborhood. Armstrong Atlantic State University relocated to 250 acres off Abercorn near Middle Ground Road in 1966<sup>498</sup> and Candler/St. Joseph's Hospital constructed its facilities diagonally across Abercorn at Mercy Boulevard in 1970.<sup>499</sup> The increasingly concentrated population drew churches to Forest River Farms through the late 1990s; they were built on what would be considered suburban scale—large structures with accompanying parking to service sizable congregations. One of these is located on the parcel immediately adjacent to the mosque site on Dutchtown Road.



*Figure 6.2 Temple of Praise Church, 1023 Dutchtown Road. Photo KE Foley.*

<sup>497</sup> Metropolitan Planning Commission Report to Mayor & City Council regarding request to rezone property at 1030 Dutchtown Road. 5/1/2001.

<sup>498</sup> Website of Armstrong Atlantic State University, accessed 4/6/2010 ([http://www.armstrong.edu/About/armstrong\\_facts/aasu\\_history](http://www.armstrong.edu/About/armstrong_facts/aasu_history))

<sup>499</sup> Email communication with Scott M. Larson, Public Relations Manager, St. Joseph's/Candler Hospital. 04/06/2010.

Indeed, given the variety of uses in Forest River Farms from the earliest days of its governance by the city, one could make the argument that it had been a mixed-use neighborhood for roughly thirty years by the time the Chatham County-Savannah Metropolitan Planning Commission (MPC) wrote the 1993 Future Land Use Element of the Chatham County Comprehensive Plan.<sup>500</sup>

Despite the mix of uses and housing types in Forest River Farms, the Future Land Use Plan recommended that the district—and particularly the area south of Dutchtown Road, along both sides of Mohawk Street and east of Apache Avenue—remain under R-6 zoning to protect what was then deemed its low-density single-family residential character. At the same time, the plan recognized that Abercorn Street would continue to be the center of Savannah’s new retail and office development. Abercorn Extension, which begins just west of Middle Ground Road and very near the study site, was anticipated to be one of several roadways that would see commercial growth.<sup>501</sup> The two goals, preserving residential character and encouraging economic expansion along Abercorn, would prove difficult to achieve in equal measure.

As the Abercorn artery flourished through the 1990s, developers proposed semi-attached townhouses, medium density multi-family housing and group homes along the blocks around the study site at 1030 Dutchtown Road.<sup>502</sup> The increasing development pressures led the city to adopt a land use plan for Forest River Farms in 1998.<sup>503</sup> In it, and despite the obvious area transition to mixed residential use, the MPC and the city aldermen reaffirmed their desire to give primacy to low-density single-family residential development in a small, defined area: east of Apache Avenue and south of Dutchtown Road. R-6 zoning was continued, with an MPC

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<sup>500</sup> See volume 6, “Housing Element” and volume 8, “Land Use Element.” Comprehensive Plan for Chatham County, Georgia, Prepared by the Chatham County-Savannah Metropolitan Planning Commission. May, 1993.

<sup>501</sup> *Ibid.* Volume 8, pages 13 and 29.

<sup>502</sup> Saxman interview

<sup>503</sup> This plan is referenced in the background sections of two internal MPC memos relating to the rezoning of the study site (MPC to Mayor and Aldermen, 05/01/2001 and MPC staff to commission members, 07/17/2001). However, neither of my two staff contacts have any knowledge or memory of it and cannot locate a copy of it.

commitment to protect extant conforming uses. Higher densities would not be approved, according to the 1998 area plan, on parcels adjoining conforming uses and/or where lower densities could not be protected with buffers and separation.<sup>504</sup>

The tool frequently used to keep the above commitment was the planned unit development (PUD). PUDs offer a degree of flexibility in the application of zoning regulations and make possible the inclusion of diverse uses in a single project. For example, a planned unit development embedded within a particular zone can be required to have greater setbacks and open space percentages than are called for in the standing zone, thereby affording greater protections for surrounding uses. The traditional PUD consists of a large amount of acreage and intentionally includes a mix of both housing types and land uses. In Savannah, however, the PUD is applied more loosely and frequently, and often to smaller parcels, which commonly include only a single use.<sup>505</sup> This unconventional application of the PUD in Savannah seems to be in keeping with the municipality's highly contingent zoning. In fact, the PUD was so commonly applied in Forest River Farms, along with multi-family parcel rezonings and religious/institutional use approvals, that by 2001 a neighborhood had been formed in which R-6 designation was the exception and not the rule.

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## PART VI: AREA DEMOGRAPHICS<sup>506</sup>

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As in this work's other case studies, the discussion of demographics for Savannah will focus on data gathered in the 2000 US Census, the year closest to the Islamic Center's proposal. Some comparison will be offered from 1990. To accomplish size comparability among case populations, one must compile census tracts for Savannah. Context for the compilations will be

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<sup>504</sup> *Ibid.*

<sup>505</sup> Moore and Plumbley, *ibid.*

<sup>506</sup> Data drawn from the 1980, 1990 and 2000 United States Decennial Census via Social Explorer.

given by three sets of data: for the city of Savannah, for the city's southside (below DeRenne Avenue), and for the single tract in which the Islamic Center is located (109.1).

Even the briefest examination of US Census demonstrates that throughout the second half of the twentieth century, Savannah has been a city of whites and African Americans. The population has been divided roughly in half, with slightly more African Americans. In 1990 and 2000, other races have made up less than 5% of the population. In 2000, 96% of the city's population was native born and only 1.5% were naturalized citizens. The majority ethnic groups represented in the Islamic Center of Savannah, Pakistani-Americans and Arab-Americans, represented a tiny fraction of the 1990 and 2000 population counts (they numbered less than 2,000). It is difficult to reliably report how much an increase the numbers might represent for those groups, because tracking race diversification via the census can be somewhat problematic—categories are inconsistent census to census, and because the data is self-reported. Suffice to say that the minorities represented in the Islamic Center of Savannah are sparsely represented across the city, and seem to number fewer than five in the census tract in which the mosque is located (109.1), which had a population of 3,650 in 2000. It seems fair to say, then, that the demographic profile of the Islamic Center's membership is a distinct minority in Savannah and in the neighborhood.

The main industrial activities of Savannah residents in 2000 were educational, health and social services (23%), followed by arts, entertainment, recreation, accommodation and food services (14%). These categories may reflect the concentration of hospitals and educational institutions in the city, as well as its strong emphasis on tourism. The employment profile of residents in the Southside and the census tract resembles that of residents throughout the city. Southside and tract residents, however, are somewhat more likely to hold jobs in retail than those citywide, likely reflecting the concentration of shopping venues throughout the area.

Savannah and the study neighborhood are decidedly middle to lower-middle class. The median household income for the across the city in 2000 was \$29,000, as it was for the tract (the Southside household earned an average of \$38,000). Nearly thirty percent of Savannians completed their education in high school, while close to another 30% completed some college; only 13% completed a bachelor's degree. Similar educational attainment patterns hold in the Southside and the tract. For the purposes of this study, it is most helpful to examine housing statistics for the tract itself—the residential area immediately surrounding the mosque. Of the 1,686 units counted there in 2000, their median value was \$73,000 and only 44% were owner occupied.

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## **PART VII: MOSQUE SITE DEVELOPMENT HISTORY**

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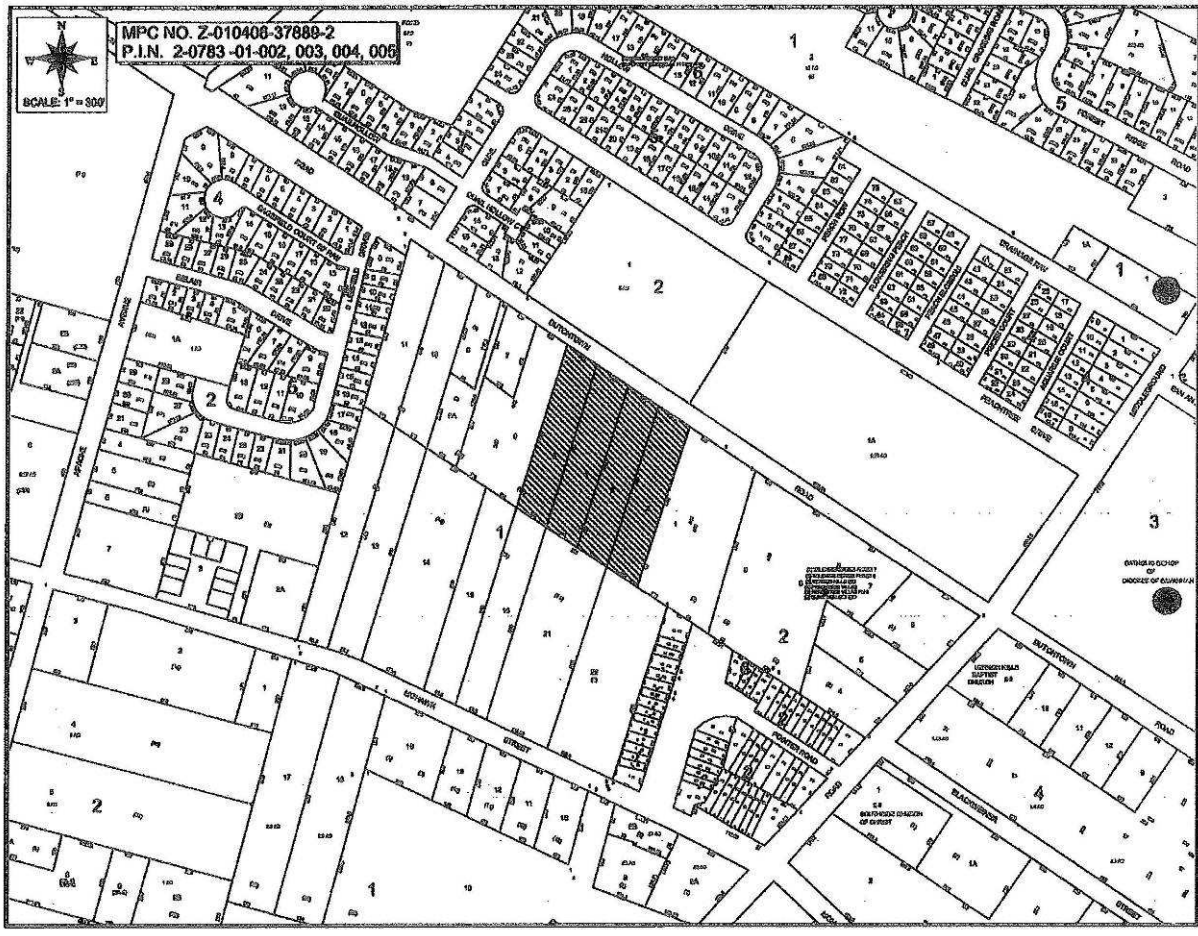
The Shuman family owned a small ranch house and three adjoining “farm” lots at 1030 Dutchtown Road from the 1960s. Their aggregated parcels, which retained R-6 zoning, totaled 3.9 acres, a sizable piece of land given surrounding development on subdivided lots (see Map 6.4). After the senior Shumans died, their children tried to sell the property, but got little market response. They concluded that because of surrounding multi-family and institutional development, no buyer was interested in the single family home, or in demolishing the existing structure and building a larger home on the aggregated lots. In early 2001, they petitioned the city to upzone the parcel from R-6 to RM-12,<sup>507</sup> a multi-family designation which would allow up to 38 dwellings—twice that allowed under the R-6 designation.<sup>508</sup> Citing existing multi-family complexes and institutional/religious usage on surrounding lots, the family argued that the neighborhood was “no longer a strictly residential area” and asked for the zone change so that

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<sup>507</sup> Application for zone change, submitted to Savannah Metropolitan Planning Commission 03/30/2001. Submitted by Shuman family's Coldwell Banker real estate agent on their behalf.

<sup>508</sup> MPC Report to mayor and aldermen, 05/01/2001.





Map 6.4 Neighborhood tax parcel map with study site cross-hatched. Note individual “farm lots” that in aggregate constitute the parcel. Attached to 7/17/2001 memo to mayor and aldermen from the MPC regarding the petition of the Shuman children to rezone. MPC file number Z-010403-37889-2.

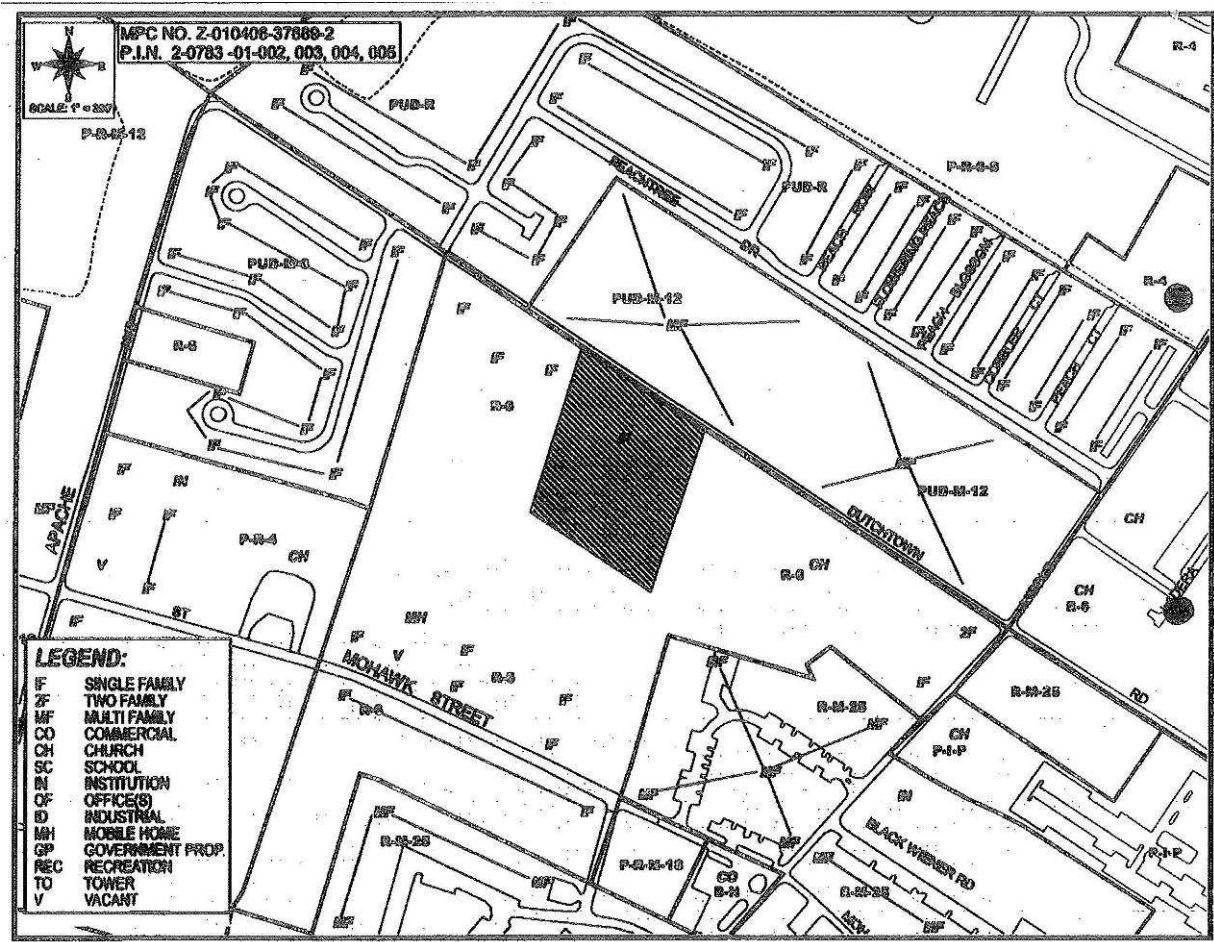
the land could be “used as a more suitable use [sic].”<sup>509</sup> The Shumans, it seems, were accurately reading the changes which had occurred around them.

The Metropolitan Planning Commission was the lead agency for zone changes in the Forest River Farms R-6 district. The senior planner assigned to the project, William Saxman, made findings of fact, which were delivered in memo form and in presentation to commission members. The commissioners then forwarded the case to the aldermen for ruling. When reviewing the file, one is struck by the dissonance between the tax and zoning maps (see Map

<sup>509</sup> Zoning Amendment Application, *op. cit.*



6.5), which reflect development realities, and the arguments made by Mr. Saxman. He held that the area was “predominantly developed with single family residences,”<sup>510</sup> but the maps make



Map 6.5 Neighborhood zoning map with study site cross-hatched. Note the multiple PUD districts already established around the site. Attached to 7/17/2001 memo to mayor and aldermen from the MPC regarding the petition of the Schulman children to rezone. MPC file number Z-010403-37889-2.

clear that the parcel and the few adjoining single-family homes on large lots were an island in a sea of previously approved, higher density single- and multi-family developments. Only one of these developments, Quail Hollow, is even referenced in the report. And, surprisingly, because of the mid-street boundary selected for the examination, the apartment complex and residential elderly care facility directly across Dutchtown Road from the site do not even enter the narrative.

<sup>510</sup> 5/1/2001 MPC report, *op. cit.*, page 1



*Figure 6.3 Dutchtown Villa apartment complex directly across Dutchtown Road from the driveway for the Islamic Center of Savannah. Photo KE Foley.*



*Figure 6.4 Residential elder care facility at the corner of Dutchtown Road and Middleground Road. The yellow brick wall in the right of the image is the corner of the Islamic Center of Savannah, demonstrating the proximity of the two developments. Photo KE Foley.*

On the block itself, an entire complex of multi-family townhouses (at the corner of Mohawk and Middle Ground), zoned R-M-25, is absent from the analysis. The only non-conforming uses Saxman did reference are a church, two duplexes and a mobile home.<sup>511</sup> The result is an

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<sup>511</sup> *Ibid.*

abstracted understanding of the block which ignores its place in an evolving neighborhood, as well as its own evolution.



*Figure 6.5 Portion of the multi-family townhouse complex at corner of Middleground Road and Mohawk Street. The complex is in the same block as the study site (see tax parcel map). Photo KE Foley.*

Two members of the public, resident on Mohawk Street directly behind the parcel, spoke against the proposal. The minutes record Ruth Turner's comments: "Rezoning this to a multi-family designation would upset the entire community. That block is the only place left for single-family residences. There are no sidewalks, nor are there playgrounds in the area. This would also create problems with traffic."<sup>512</sup> Current staff report that in Savannah's land use decisions, public comment is often given disproportionate weight, relative to common practice.<sup>513</sup> Although I cannot demonstrate the influence that public response had on Mr. Saxman's argument, his policy analysis does tend to support Mrs. Turner's sentiments. He wrote: "more intensive development on the block would be detrimental to the livability of the single-family residential environment,"<sup>514</sup> and in his comments to the commission, he projected that rezoning the subject

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<sup>512</sup> *Ibid.*

<sup>513</sup> Moore, 5/3/2010.

<sup>514</sup> *Ibid*, page 3.

property would lead to further rezoning requests and increased traffic along Dutchtown Road.<sup>515</sup> Commission members found the arguments persuasive, and recommend that the City Council deny the Shumans their request, which it did. Significantly, however, several commissioners acknowledged the area's transition and suggested that Dutchtown Road should be studied for rezoning. This left the door open for the applicant to negotiate further.

While the MPC staff reviewed the existing zoning, development possibilities and traffic for Dutchtown Road, the Shuman children secured an attorney to represent them. He consulted with Mr. Saxman regarding possibilities, and then submitted a request to amend their petition. Rather than upzoning to R-12, they asked that the multi-family planned unit development designation be assigned to the parcel, at a density of eight units per acre.<sup>516</sup> At the same time, correspondence was received from several property owners along Dutchtown Road expressing their interest in having their own parcels similarly upzoned.<sup>517</sup> The two opponents who spoke against the proposal in its first iteration also spoke against the modified proposal, but the letters of support suggest that far more in the neighborhood felt and understood its transition. The MPC staff endorsed the PUD-M-8 request on the grounds that the wider setbacks required in Savannah's PUD design standards would afford greater protection for single-family uses, and allow a more comfortable juxtaposition of varying densities. Interestingly, though, the concerns about subsequent upzone requests and increased traffic impacts are absent from the analysis, even though the number of potential dwelling units under the PUD would drop only to 26 from the 38 allowable under the R-12 designation: "Vehicular traffic patterns for eight units per net acre would not significantly impact the adjoining properties or the balance of the R-6 zoned area along the south side of Dutchtown Road." The potential increase from one unit to 26 is referred to as a "modest increase in residential density."<sup>518</sup> I suspect that the supporting letters from

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<sup>515</sup> Excerpt from the 5/1/ 2001 MPC meeting minutes.

<sup>516</sup> Dana F. Braun, Esq. Letter to Clerk of the Council requesting amendment of zoning petition to PUD-8. 6/21/2001.

<sup>517</sup> MPC staff memo to MPC commissioners, 7/17/2001.

<sup>518</sup> Ibid.



neighbors contributed to this shift. And, to meet the desires of others wanting their parcels upzoned, the staff recommended that the same zoning designation be considered upon the assemblage of parcels of at least three acres, the minimum acres required for a PUD-M classification. The MPC sent the modified proposal to the city council with unanimous support, along with a recommendation to amend the land use plan for Forest River Farms.<sup>519</sup> The council approved the changes in September 2001.

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### **PART VIII: ACQUISITION OF THE PARCELS BY THE MUSLIM COMMUNITY**

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Dr. Masroor and Dr. Ahmed consider the story of the Muslim community's acquisition of the Dutchtown Road parcel to be a tale of divine intervention. Objectively, it does consist of a series of striking coincidences that would be remarkable in any development saga.

The mosque's board actively searched for a development site for about six months in early 2001.<sup>520</sup> For commuting convenience and neighborhood compatibility, they focused in the Forest River Farms area, and considered several sites on or near Middle Ground Road. The parcel at 1030 Dutchtown Road seemed an appropriate size to accommodate their vision of a multi-use Islamic Center, so they arranged a meeting with the family selling the property. When they arrived, they were surprised to be greeted by a member who also was their patient, and in conversation determined that in fact several other Shumans also were patients, in addition to the granddaughter who was a nurse in the doctors' practice. The familiarity allowed an easy rapport to be struck, and purchase negotiations progressed smoothly. Surely the doctors' purchase of the property also was helped by the fact that the property by then had been on the market for two years with very little buyer interest. Dr. Masroor bought the property in a cash

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<sup>519</sup> Excerpt from the MPC meeting minutes, 7/17/2001.

<sup>520</sup> Unless specifically noted otherwise, all facts in this session are drawn from the author's interview with Masroor and Ahmed 4/11/2008.

purchase with the intention of worshipping in the house until enough funds could be accumulated to demolish it and raise a purpose-built masjid. A cash purchase enabled the Muslim community to avoid taking a mortgage for the parcel purchase. Many Muslims consider mortgages and their interest to be the equivalent of *riba*—usury or usurious interest—which is forbidden in Islam

As previously stated, the doctors were unaware that they would need a use approval to convert the house to a prayer hall. So, without any city permits, they undertook simple renovations to open the interior space and allow congregational prayer. These were completed just before Ramadan in November 2001. Small groups of Muslims used the makeshift prayer hall until the following Ramadan when activity on the property drew noise complaints from a neighbor. A city official<sup>521</sup> contacted Dr. Ahmed to inquire about how the property was being used. The doctor explained that the structure was still in use as a house (a member was living there as a caretaker) but that small prayer sessions were held there as well. He reported that the community was using the house temporarily and intended to build a larger structure, and assured the official that he would take personal responsibility for controlling noise levels. In response, the official, told him to “keep it low key and sooner or later you guys should file to convert it to a [mosque] and all so the city knows how you’re going to use it.”<sup>522</sup> Not wanting to have poor relations with the neighbors, the doctors determined who had made the complaint, then approached the couple by telephone. They did not return the doctors’ calls, but later showed up at the door of the mosque with a cake as a good will gesture. Researching medical office’s phone number from their caller identification, the neighbors recognized the practice because their friend was its assistant office manager. That personal connection allayed the couple’s fears; there has not been a single complaint about the mosque since. The doctors and

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<sup>521</sup> I do not know exactly who this person was, since Dr. Ahmed referred to him variously as an alderman and the city manager. It is interesting to note that it was not a code enforcement official as one might expect in a use violation case, but a more senior city official. This suggests that from the beginning the stature and trustworthiness of the doctors was recognized.

<sup>522</sup> Paraphrased by Dr. Ahmed in interview with Foley. Transcript page 20.

other mosque members also took up proactive outreach with other neighbors around this time, and reported being warmly received. They next turned to securing proper permits for the interim mosque.

## **PART IX: INTERFACE WITH THE PUBLIC PLANNING PROCESS**

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While determining what was needed to secure a certificate of occupancy for the house/prayer hall, Dr. Ahmed saw his patient, Bill Saxman, entering a public hearing at city hall.

Coincidentally, Mr. Saxman, who was by then retired from the Metropolitan Planning Commission, came in to see Dr. Ahmed for his routine checkup the following week. Without previous knowledge of Mr. Saxman's professional experience, Dr. Ahmed inquired about what he had been doing at city hall. The two then discussed the planning issues that the Muslim community was likely to face—needing a use approval chief among them—and Mr. Saxman explained that in his retirement he was acting as a consultant to development applicants. The doctors hired him to make their zoning and use applications and to see them through the public approvals process.

The importance of the connection to Mr. Saxman cannot be overstated. He had served the MPC for nearly 30 years, ultimately as Director of Development Services.<sup>523</sup> He was known and trusted among the staff and commission members. More importantly, he was recognized in the neighborhood because of his involvement with previous development proposals there, as well as the land use/zoning study for the area. He understood the complexities of zoning in Savannah and the requirements of the approvals process. His role in the preparation and presentation of the land use proposal for the mosque lent the applicant a degree of credibility,

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<sup>523</sup> Saxman, *ibid.*

and, I suspect, paved the way for its straightforward review and relative lack of controversy. In the words of the applicants, “you may call him a lobbyist. . . if we [would have had] to engage a lawyer. . . it would have cost us much, much more. So Bill Saxman was very cost effective. . .”<sup>524</sup> “He [told us], ‘there [is] no reason to get a lawyer—I’ll take care of it.’”<sup>525</sup>

Because Mr. Saxman had been part of the upzoning of the mosque parcel to the PUD-M-8 designation, he was keenly aware of allowable uses in that zone. As of right uses included single family and detached residences, two-family residences, multi-family residences, senior congregant housing and university dormitories.<sup>526</sup> Supportive but limited non-residential uses, such as food stores and professional offices, were allowable once a minimum 500-unit dwelling unit threshold had been met and therefore demand generated. A flexible provision allowed “similar uses” with the approval of the Metropolitan Planning Commission.<sup>527</sup> Saxman apparently believed religious institutions to be appropriate similar uses, but also reasoned that the tiny PUD parcel at 1030 Dutchtown Road, like so many PUDs in Savannah, would never reach the 500 dwelling unit threshold. He therefore petitioned to amend the zoning ordinance to add “use no. 15 (churches and other places of worship). . . as a special use [to the PUD-M districts] even where there are fewer than 500 dwellings,” provided that, as in other residential zones, the place of worship is (a) at least 100 feet from a conforming residential dwelling, and (b) located on a collector roadway or arterial street.”

In 2003, Dutchtown Road was classified as a minor roadway, intended to provide access only to properties fronting the street. However, it did connect two collectors (Apache Avenue and Mohawk Street), which typically themselves connect several neighborhoods and provide access

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<sup>524</sup> Masroor, *op. cit.*

<sup>525</sup> Ahmed, *op. cit.*

<sup>526</sup> Information in this paragraph is drawn from a memo from the MPC to the mayor and aldermen regarding the text amendment to PUD-M districts to allow religious uses and a modification of the street classification map for Chatham County, 2/4/2003.

<sup>527</sup> MPC memo to mayor and aldermen, 7/17/2001.



to arterial roadways from minor roadways. Dutchtown also transected Middleground Road, a secondary arterial. For these reasons, Saxman reasoned that it would be appropriate to reclassify Dutchtown as a collector street, thereby making it possible for it to host a religious facility. The applicant was required to pay for a traffic study to justify the change, which it did, and the results supported the case. The Dutchtown Road reclassification was endorsed by the technical subcommittee of the Chatham Urban Transportation Study, along with a similar change for two other roadways in the neighborhood.<sup>528</sup>

The Dutchtown Road reclassification seems to have been a point of contention between Mr. Saxman and planning staff. I do not know the exact details of the disagreement, as it was mentioned only in passing by Mr. Saxman and staff would not comment on the matter. I found little explanation in the public record—I was not permitted to review the public files related to the mosque parcel myself, and missing from the document photocopies I was given were the internal communications on the topic, as well as the staff recommendations to the MPC and the minutes of the MPC meeting in which it was discussed. Although I cannot prove my suspicion, I theorize that Mr. Saxman exerted his influence with more senior staff and/or commission members to influence outcomes, and the road reclassification was approved. However, there seems to have been a compromise: now rather than the MPC approving the special use as was the practice for other non-residential uses in PUDs,<sup>529</sup> the mayor and alderman would need to approve houses of worship, consistent with other residential zones.<sup>530</sup> Although this modification hardly seems onerous, it did add another layer of review beyond the MPC. Saxman viewed it as a “monkey wrench” that dragged out approvals: “this should have been a six-week process and it took us [a few] months to get through. It wasn’t about fighting the mosque, it was just [process].”<sup>531</sup> Still, one month later the Dutchtown Road reclassification and the PUD-M zone

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<sup>528</sup> MPC memo 2/4/2003, *op. cit.*

<sup>529</sup> MPC memo to the mayor and aldermen, 7/17/2001.

<sup>530</sup> MPC memo to the mayor and aldermen, 2/4/2008.

<sup>531</sup> Saxman, 4/10/2008.

modification to allow religious uses were approved by the City Council.<sup>532</sup> With the preparatory approvals in place, Mr. Saxman moved ahead with the specific use proposal.

None of this is to suggest that Mr. Saxman, the planning staff, or Metropolitan Planning Commission members acted inappropriately. It is merely to suggest that Mr. Saxman's association with the application eased the approvals process. Because of his access, knowledge and experience, Mr. Saxman was able to anticipate necessary steps and negotiate on behalf of his clients before the matter ever reached public hearing. Surely, working on their own, inexperienced applicants like Drs. Masroor and Ahmed would not have anticipated the subtle, preparatory modifications that were necessary to stage their successful review. Staff would likely have assisted the application, but they may not have been able to secure the same outcome that the trusted and politically nimble Mr. Saxman achieved, or at least have been able to achieve it with the same speed.<sup>533</sup>

The use proposal itself was first considered by the aldermen on May 15<sup>th</sup>, 2003, left open for public comment and given final, unanimous approval by the mayor and aldermen on June 26<sup>th</sup>. The only apparent controversy in the vote was procedural. The reader will recall from the earlier discussion on the somewhat confused matter of board purview in Savannah that several boards may review similar zoning issues, with varying degrees of experience and competency. Although the above described compromise resulted in the city council approving special uses within PUD-M districts, it is clear that the aldermen were a bit out their depth in their considerations. The minutes of the hearing suggest that the aldermen were unsure of procedure

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<sup>532</sup> A second zone amendment was made, exempting religious uses from the lot coverage/density controls applied to other non-residential uses in PUD-M zones. Normally, the building area, landscaping and parking areas were not to exceed 3% of the PUD's developable area. MPC memo to the mayor and aldermen, 2/4/2003.

<sup>533</sup> Further indication of familiarity in the use approval process is found in the minutes of the April 15<sup>th</sup>, 2003 MPC session in which the commission accepted the staff recommendation for approval and forwarded the matter to the council. In the minutes, it is recorded that Commission member Robert L. Ray disclosed that Dr. Masroor was his family physician, but, he stated: "this would not impact his voting on the petition." Excerpt from the 4/15/2003 MPC meeting minutes. Also, in all communications to the applicant from the City Clerk's office "Dear Mr. Saxman" is crossed out and replaced with a handwritten "Dear Bill."

when making the findings of fact necessary to approve a special use. In response to a question not reflected in the minutes, City Attorney JB Blackburn responded:

. . . this is a new procedure that has been adopted as an amendment to the zoning ordinance to provide that a special use would be on the zoning maps. Therefore, this requires an amendment to the zoning maps with the advertising and when these are done, the requirement furthermore requires that City Council make certain findings. It is not a discretionary matter, but those certain findings have to be made. City Attorney Blackburn explained that during this hearing, which was the Dutchtown Road, City Council made the findings. Therefore, the ordinance will recite that Council made the findings similar to what the Zoning Board of Appeals has to do to establish a use. Mr. Blackburn stated that City Council, itself, serves as the body to grant a special use permit. This is the first time that we have done this. Alderman C. Jones asked City Attorney Blackburn to explain the type of findings. City Attorney Blackburn explained that the findings are set forth in that they don't do harm to the other properties in the neighborhood, the nature of the property as such that it fits the type of use; the usual type of findings for a use that has to be established by the Zoning Board of Appeals. He said except for this instance, the use has to be established by City Council. Alderman C. Jones asked if this involves parking and so forth. To this question, City Attorney Blackburn answered affirmatively.<sup>534</sup>

I contacted Attorney Blackburn regarding these minutes, but again he declined to speak with me or engage in correspondence. Without explanation, I can only assume from these minutes that the aldermen adopted findings of fact that they did not fully understand and then approved a special use based on those findings.

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## **PART X: PUBLIC PARTICIPATION**

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As mentioned previously, only two members of the public commented regarding the upzoning of the Dutchtown Road parcel from R-6 to PUD-M-8. They were concerned that the increase in

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<sup>534</sup> Minutes of the Savannah City Council, 6/26/2003, recording the vote taken 6/12/2003. These minutes were provided to me electronically by the city clerk's office on 3/7/2008. Because it looked to me as if only an excerpt had been provided to me, I contacted the city clerk's office again and simply asked for that date's full minute, not the portion related to the mosque's use approval. My review of the full minute, delivered electronically on 3/30/2010, confirmed that the paragraph quoted here is in fact the only documentation related to the discussion of the mosque approval.

density was out of character with the residential neighborhood, that it would have an adverse impact on traffic patterns, and that sufficient facilities were not available to meet the needs of residents in multi-family housing. However, not a single public comment was received in response to the proposal to establish a mosque on the parcel. Given concerns expressed for other mosque developments, in this study and across the country, one might reasonably expected to have received at least some feedback regarding the potential traffic impacts from multiple prayer times beginning before dawn and extending after dark. There likely are several reasons for the neighborhood's silence.

Most importantly, the neighbors may not have realized that a *mosque* was proposed for the site. The legal notices sent out to neighboring property owners describe the development simply as a "religious facility." Two churches had been developed in the neighborhood in the previous decade, including one on the parcel immediately east of the mosque parcel. Property owners might reasonably have assumed that another Christian church was joining the neighborhood, and potentially have been comfortable with a commodity assumed to be known.

From a practical perspective, it may have been difficult for neighbors to attend the public hearing on the proposal. At the time, MPC meetings were held at 1:30pm on Tuesday afternoons and City Council meetings at 2pm on Thursdays. Clearly, attending these meetings would be difficult for most job-holders, particularly if the duration of the meeting and a proposal's place on the agenda were not predictable, as is the case with most public meetings. Not unexpectedly, commission member Lacy Manigault told me that the low level of participation in the Dutchtown Road hearings was typical: "if an issue is very controversial, folks find a way to show up." When I asked why he thought the two parties who had opposed the upzoning did not return to oppose the mosque, Mr. Manigault speculated that when so few parties show up at an early hearing to voice their opposition, they rarely return for later sessions because "they feel

they've said their piece and won't impact the outcome."<sup>535</sup> However, the timing of the hearing doesn't entirely explain the lack of response to the project—no written comments were received either. Clearly, more elements were in play.

First, one might speculate that the high percentage of renters in the neighborhood (estimated at 56% for the tract in the 2000 US Census) was a factor. Renters may not have felt sufficiently invested in the neighborhood to participate in land use discussions (and of course they don't receive legal notices for public hearings; these are sent to the owner of record). It is often claimed that landowners with a fiduciary stake in a property are more invested in its care and in external factors that might affect its value, such as land use proposals for neighboring parcels. But apparently none of the 44% of the ownership class took interest in this case, either.

My interview with Mr. Saxman revealed another way that his involvement with the mosque proposal was critical.<sup>536</sup> Property owners in the area were familiar with him in his role as MPC staff member: “. . . I worked with [the neighbors] on their master plan four or five years before; they thought of me as someone that when I said something I stood by it and [I] didn't try to flip-flop with them.” In advance of the use hearing, Mr. Saxman made personal visits to all adjoining property owners, explaining the project and vouching for the trustworthiness of his clients. His word on that matter wasn't really necessary, though: “A lot of them knew the doctors. . . they either went to them or had people in their family who had [gone] to either one of these doctors so, you know, they knew them as individuals. . . it wasn't like an unknown feature coming in and that's the biggest fear I guess. . . fear is the issue itself.” Most critically, Saxman explained why he thought a mosque was a preferable use to the multi-family housing that could have been built on the site as-of-right. Whereas housing would bring twenty-four hour vehicle traffic and more bodies living in the neighborhood, he reasoned, the mosque's membership would be a transient

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<sup>535</sup> Interview with Lacy A. Manigault, commissioner, Metropolitan Planning Commission. 4/11/2010.

<sup>536</sup> All information and quotes in this and the next paragraph are drawn from my interview with Saxman 4/10/2008.

addition to the community. That is, traffic would increase periodically throughout the day, and motorists would arrive and depart in clusters. Saxman noted that the church next to the mosque parcel had opened not long before and the neighborhood had had no issues with its traffic load; he made a point to associate the two cases. When asked how the neighbors responded to the plan he laid out for them, he reported that “. . .I thought they were all sensible and they all seemed to have their head[s] on straight and they didn’t have a problem with the mosque around there. . .of course now with. . .a lot of other stuff we’ve been involved in in Iraq and all maybe [it would be] a little bit different story...”

I also suspect that worshipping first without a use approval and certificate of occupancy worked to the applicant’s advantage. The house functioned as a prayer hall for nearly a year and a half before any public hearings were held related to it. Other than the one party who was bothered by traffic, no other neighbor reported to Mr. Saxman even being aware that a house of worship was functioning next to them. The Muslim community’s quiet use of the property, although not permitted by its zoning at the time, was the best testament to what the neighbors might expect, and strengthened their case for approval.

I did contact the two neighbors who spoke against the upzoning, hoping to understand why they had not come out to oppose the mosque development. My conversation with the first was unreliable because of an apparent illness that seemed to have affected her memory. The second responded via his attorney in April 2008.<sup>537</sup> Clayton Tillman reported that his client had recently sold his house and was leaving the neighborhood, but not simply because of the mosque. The mosque, for him, was the last straw. He felt that the city had betrayed its promise to maintain the neighborhood as a single-family residential area. In his view, the beauty of the area, as well as the quality of life, had declined since he bought in the 1960s (when it was an agricultural zone), and particularly since the city had allowed the Oglethorpe mall and multi-

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<sup>537</sup> Clayton Tillman, attorney to Orin C. Porter, telephone conversation 4/2/2008.

family housing. The attorney was not shy about acknowledging that the apartments had brought African-Americans to the neighborhood, and that his client believed that their presence had an adverse impact on the area; “color changes things, race makes a difference,” he told me. Once “they” had come, he no longer felt safe in the neighborhood, and for him it didn’t matter what followed. His client saw the arrival of the mosque and the demographic that would attend it as an inevitable succession in the decline the city had allowed. He didn’t bother to oppose the mosque because he felt that the city had ignored him over the rezoning of the site, so wouldn’t listen to him regarding the mosque: “he has in his mind that the city will do what the city wants to do so it doesn’t matter what he says.” Mr. Tillman’s client approached his neighbor to the west, who is a large residential developer and had been trying to assemble parcels on Mohawk. The buyer expected that the entire Mohawk corridor will be developed as multi-family housing and he wanted to be part of that evolution. The closing on the client’s parcel was to have taken place not long after my conversation with Mr. Tillman.

Certainly, I do not think that this one person’s view was representative of all the neighbors. However, I have seen such sentiments in other mosque reviews, and watched them influence behaviors. Most commonly, the rawness of the reaction is in some way veiled, and I have had to feel around its edges with careful questions. Fear of judgment, shame, or other societal pressures often cause parties to withhold truths about their reactions. At the close of our conversation, Mr. Tillman said, “you know, we’re all NIMBYs—we all like the status quo.”

In the absence of opposition, the review process for use approval focused on issues of compatibility. The neighborhood’s evolution had set the stage for the appropriate inclusion of a new religious institution. The mosque would take its place among church on the east, an adult congregant living facility and apartments on the north, and a dense vegetative buffer on the west and south. The impact on the residential properties on the other side of the buffers would be mitigated further by the generous size of the site. Unlike the Voorhees and Scottsdale cases

discussed previous chapters, the Savannah Muslim community had acquired an amount of land sufficient to accommodate its current programmatic needs, its parking and green space. Since the Muslim community intended to worship in the rehabilitated residence for the foreseeable future, their impact on the surrounding community seemed likely to be little different from that of the previous residence on the site. The mosque offered the promise of its respectful integration into the community. All of these considerations played heavily into the project's recommendation by the Metropolitan Planning Commission, and its approval by the mayor and aldermen.

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## **PART XI: VIOLENCE AND DESTRUCTION VISIT THE MUSLIM COMMUNITY**

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After a nearly conflict-free use approval for the Islamic Center, a series of crimes were committed against the Muslim community. On August 3, 2003, five bullets were fired at the garage attached to the house being used temporarily as a prayer hall.<sup>538</sup> On the 18<sup>th</sup>, a nearby apartment rented by a member was ransacked. A threatening letter found on the scene warned that Muslims were being watched "24/7" and demanded that they leave Savannah. It was branded with a swastika and threatened the lives of Muslims.<sup>539</sup> Then, on August 24<sup>th</sup>, the prayer hall was firebombed around 3:00am and burned nearly to the ground.<sup>540</sup> The fire was immediately ruled an arson; the FBI began investigating it as a hate crime and a violation of the Muslim community's civil rights.<sup>541</sup> The mosque had had no sign other than the public hearing notice posted for its use approval review, and it had read only "religious facility" and "worship center." The vote had received no media attention. The Islamic Center of Savannah was listed

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<sup>538</sup> Anne Hart, "Investigators Say Islamic Center Fire Was an Arson," *Savannah Morning News/Savannah NOW*, web posted 8/26/2003. Accessed 3/26/2008 at [http://old.savannahnow.com/stories/08/26/03/LOC\\_firecause.shtml](http://old.savannahnow.com/stories/08/26/03/LOC_firecause.shtml).

<sup>539</sup> Anne Hart, "Suspicious Fire Destroys Islamic Center," *Savannah Morning News/Savannah NOW*, web posted 8/25/2003. Accessed 3/26/2008 at [http://old.savannahnow.com/stories/0825/03/LOC\\_fire.shtml](http://old.savannahnow.com/stories/0825/03/LOC_fire.shtml).

<sup>540</sup> *Ibid.*

<sup>541</sup> Hart, 8/26/03.



in the phone book,<sup>542</sup> and certainly neighbors were aware that a mosque was there, but otherwise the building's use might never have occurred to other passersby.

The Muslim community was undaunted. At dawn on the morning of the fire, a tent was erected next to the burned-out ruin and *fajr* prayer said by a group of the faithful.<sup>543</sup> They continued to pray in that tent for some time until a trailer was erected on the site. Dr. Saad Hammid, a pediatrician who was serving as a interim imam for the community, told the *Savannah Morning News*: "The normal sense of fear and caution are there, but [the membership] are not so afraid that they will stop coming. More people are determined to be even more public about their faith."<sup>544</sup> The public's compassion matched the Muslim community's determination. A vigil was held in the city center's Franklin Square,<sup>545</sup> and religious leaders of all faiths rallied behind the Islamic Center. Letters of support flooded the editor's office at the *Savannah Morning News* for weeks.<sup>546</sup> On September 6<sup>th</sup>, an interfaith rally themed "Together for Peace" was hosted at the Islamic Center site,<sup>547</sup> and the warmth and openness of the Muslim community lauded in the press by attendees.<sup>548</sup>

Despite a \$22,000 reward being offered by FBI, the Georgia Arson Control Board and CrimeStoppers,<sup>549</sup> no evidence was ever found to link a perpetrator to the shooting, burglary or arson. Bill Saxman did report that a nearby Seventh Day Adventist church had been set ablaze several years prior, and that crime also had not been solved.<sup>550</sup> I did not find any mention of the

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<sup>542</sup> Hart, 8/25/03

<sup>543</sup> *Ibid.*

<sup>544</sup> Hart 8/26/03

<sup>545</sup> *Ibid.* The article notes that the rally was sponsored by the Savannah Peace Coalition.

<sup>546</sup> Letters to the editor related to the mosque arson, nearly all in support of the Muslim community, appeared in the *Savannah Morning News* almost daily between 8/27 and 9/14/2003

<sup>547</sup> Ann Stifter, "Muslims Call a Sunday Peace Rally," *Savannah Morning News/Savannah NOW*, web posted 9/6/2003. Accessed 3/26/2008 at [http://old.savannahnow.com/stories/090603/LOC\\_peace.shtml](http://old.savannahnow.com/stories/090603/LOC_peace.shtml).

<sup>548</sup> Ellen O'Leary, "Couple Found Cheer Where They Hoped to Bring Some," letter to the editor, *Savannah Morning News/Savannah NOW*, 9/14/2003. Accessed 3/26/2008 at [http://old.savannahnow.com/stories/091403/OPE\\_opedletters.shtml](http://old.savannahnow.com/stories/091403/OPE_opedletters.shtml).

<sup>549</sup> Eric Williamson, "Reward Offered for Information on Islamic Center Fire," *Savannah Morning News/Savannah NOW*, web posted 9/13/2003. Accessed 3/26/2008 at <http://old.savannahnow.com/stories/091303/LOC-Arsonreward.shtml>.

<sup>550</sup> Saxman, *op. cit.*

other arson in the press coverage I reviewed, so I do not know if authorities suspected a single culprit.

## **PART XII: DESIGNING A PURPOSE-BUILT MOSQUE AND ISLAMIC CENTER<sup>551</sup>**

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The arson forced the Muslim community's timeline considerably. It had been their intention to worship in the house indefinitely until they could raise sufficient funds to build a purpose-built mosque. Now, in the fall of 2003 they were worshipping under a canopy tent and needed more substantial shelter before cooler temperatures arrived. A double-wide trailer was secured and parked on the site while the burned out hull of the house was demolished and a new mosque designed. A sign was posted on the front of the lot: "God Bless America. We Will Rebuild." It remained in place until construction began in 2005.<sup>552</sup>



*Figure 6.6: Double-wide trailer used as temporary prayer hall by the ICS. Note separate entrances for men and women. Photo KE Foley.*

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<sup>551</sup> Unless otherwise indicated, all information in this section is drawn from my previously footnoted interview with Drs. Ahmed and Masroor and my interview with Patrick L. Phelps, AIA, LEED AP, 04/10/2008.

<sup>552</sup> Scott M. Larson, "After Arson, Worshippers Rebuild," *Savannah Morning News/Savannah NOW*, web posted 5/5/2004. Accessed 3/26/2008 at [http://old.savannahnow.com/stories/050504/LOC\\_mosque.shtml](http://old.savannahnow.com/stories/050504/LOC_mosque.shtml).

Dr. Masroor's patients included J. Paul Hansen, principle of Hansen Architects, PC. The firm had recently designed new offices for the medical practice, and their working relationship was very positive. The doctors turned to Hansen again, taking advantage of the firm's wide ranging experience. Although the firm had designed a range of different religious properties previously, they had never designed a mosque. That didn't matter to the doctors. Their chief concern, as two busy professionals, was that the design process be smooth and cause the least disruptions possible to their practice. Hansen was local, which would facilitate in-person communication, and they knew from their own experience that they could trust Hansen. Architect Patrick L. Phelps was assigned to the project, and he proved an eager, adept initiate to Islamic architecture.

Dr. Ahmed was the primary contact with Hansen, but he represented a committee of mosque members who debated and articulated goals for the design. The relationship between Phelps and his client was collaborative and open, and addressed several common design tensions: innovation versus tradition; dreams versus budget realities, and immediate, essential needs versus long-term expansion.

### ***Desires of the Muslim Community***

The trauma of the arson could easily have caused a faith group to withdraw from the larger community and conceal itself behind an anonymous structure. The Savannah Muslim community, by contrast, was emboldened by the attack and resolved to be even more open and visible. They were determined to design a structure that was recognizable as a mosque, both to fellow Muslims and to non-Muslims alike. The primarily immigrant-origin group favored traditional forms reminiscent of their homelands, and were particularly interested in including a dome and minaret, even though neither is compulsory in the faith. For them, and for most Muslims, the dome and minaret signal the presence of a prayer hall and a body of the faithful. They act as beacons for Muslims:

Masroor: [When] traveling, [Muslims see a dome and minaret] and know where the mosque is. . .[by including them in our design] we can give them some idea where [the mosque] is.

Ahmed: You drive down to Atlanta [and from about 10 miles away] you see on the highway there is a beautiful minaret. . .and you know [the location] of the actual masjid.

Even more important than the recognizability of the mosque to non-Muslims was its accessibility to them. The committee wanted the center to be a *whole community* center, open and welcoming to anyone. They felt that it was critically important for their membership to be a positive public face for Islam, and one way they could do that would be to host city-wide events at the center. They instructed Phelps to include flexible spaces that could be transformed for small and large public meetings and social events. The doctors have plans to host interfaith events, community service projects and a free monthly health clinic.<sup>553</sup>

Finally, the design committee looked into their collective future and planned for expanding community numbers and evolving needs. They requested a commercial kitchen, classroom space, funerary facilities (for the ritual washing of corpses), and an apartment to house an imam and his family. All of these dreams, however, would be tempered by the post-9/11 political and social climate, which made raising funds for mosque development a difficult proposition. Justice Department scrutiny of Muslim charities nearly halted money from traditional sources like Saudi Arabia and Pakistan, and caused many domestic donors to shy away, as well. The majority of the money for Savannah's Islamic Center would need to be raised from its membership, and the development plan phased to accommodate the pay-as-you-go approach necessitated by the Islamic dictate against mortgaging. The community has met the challenge. The doctors report that 80 percent of the funding has come from individuals within the community, some of whom make weekly or bi-weekly gifts from their paychecks.

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<sup>553</sup> Dana Clark Felty, "Muslims Move Focus to Local Outreach," *Savannah Morning News/Savannah NOW*, 9/9/2003. Accessed 3/26/2008 at <http://savannahnow.com/stories/node/134850>.

### ***The Architect's Education and His Vision***

Patrick Phelps's education on mosque typology was a combination of the doctors' guidance and his own research. They taught him, for example, about the spatial requirements for ablution, gender segregation, and the rituals of prayer and burial. They also provided images of mosques that appealed to the committee either for aesthetic or nostalgic reasons. Phelps conducted his own internet research on Islam and mosques, and focused particularly on designs from the Muslim diaspora: Australia, India and the United States, including structures in Tampa and Salt Lake City. Modern interpretations of the mosque provided examples for Phelps of how he might present traditional forms using less expensive contemporary materials that would meet the budgetary constraints of his client, including concrete and fiberglass.

Phelps first design was an effort to meet his client's desires and provide a creative, regional character for the structure. In form, his preliminary drawings show a structure which in its detail is quintessentially Islamic: it is fronted by a deep arcade, open on one side and supported by the march of repeating keel arches.



*Figure 6.7: Original design concept for the Islamic Center of Savannah. Patrick L. Phelps, AIA, LEED AP, Architect.*

The arches' imposts take the form of an eight-pointed star, a design motif that appears in the Islamic world in architecture, textiles, painting, and the plastic arts as well as across periods and geography. But, where one might expect these archetypal forms to be executed in masonry, Phelps turned to local, vernacular materials. The sheathing on the structure is reminiscent of clapboard, the arches and columns are timber, and the stars are metal. Together, these design elements evoke the so-called low country domestic architecture typical of the Georgia and South Carolina coasts—low-slung, frame structures shaded and ventilated by wide, columned porches. Through Phelps's vision, the Middle East meets America's eastern seaboard. Alas, the innovative concept never moved beyond his drafting table. Although the Islamic Center's design committee was intrigued by the concept, they were drawn much more strongly to traditional forms and materials.

In their final draft, Phelps's elevations show a mosque nestled among Georgia pines but which could sit comfortably in Lahore or Islamabad, major cities in the homeland of many masjid members. A grand pishtaq portal announces the main entrance. It is flanked by slender, keel-arched windows and the smaller keel-arched women's entrances. The location of the mihrab is trumpeted by a grand onion dome; a second, smaller dome caps the segmented, balconied minaret that rises to the right of the mihrab dome. Certainly, Phelps's exterior decorative palette is more simple than one might expect of a Pakistani mosque such as Lahore's Badshahi Masjid at the Lahore Fort Complex (see Figures 6.8 and 6.9).

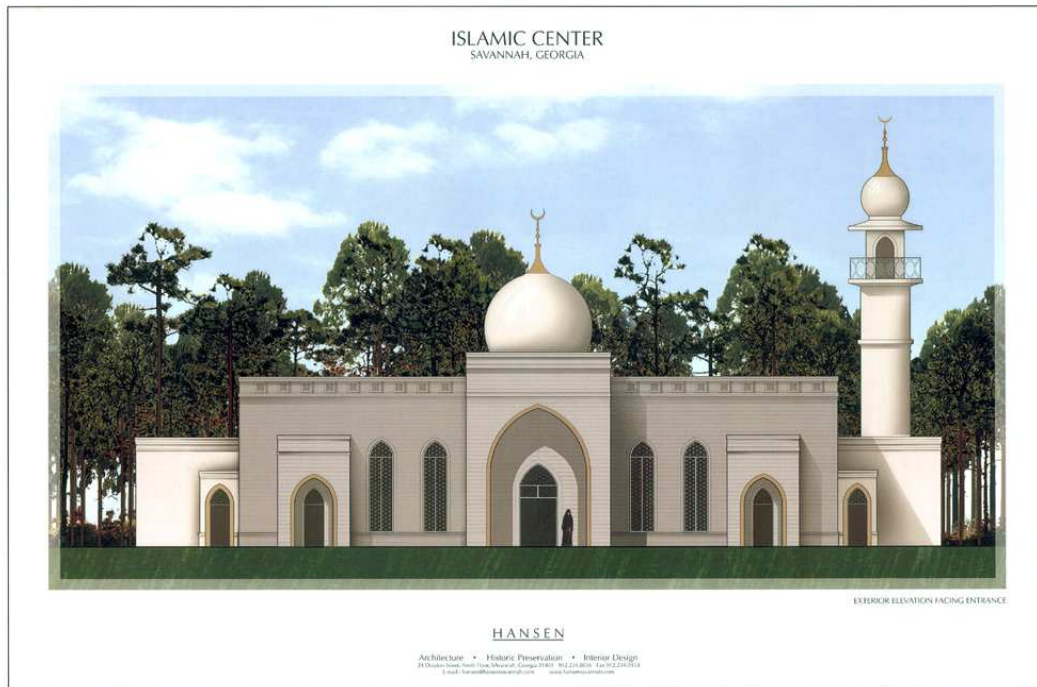


Figure 6.8 Modified exterior design for the Islamic Center of Savannah. Patrick L. Phelps, AIA, LEED AP, Architect.



Figure 6.9 Badshahi Masjid, Lahore Fort Complex. Public domain photograph by Ali Imran, accessed via Wikimedia Commons ([http://upload.wikimedia.org/wikipedia/commons/d/dd/Badshahi\\_Mosque\\_July\\_1\\_2005\\_pic26\\_by\\_Ali\\_Imran.jpg](http://upload.wikimedia.org/wikipedia/commons/d/dd/Badshahi_Mosque_July_1_2005_pic26_by_Ali_Imran.jpg)).

Even in its abstraction, the Savannah mosque's relationship to its historical antecedents is evident. It is on the interior of the Phelps design that color and pattern complexity is unleashed.



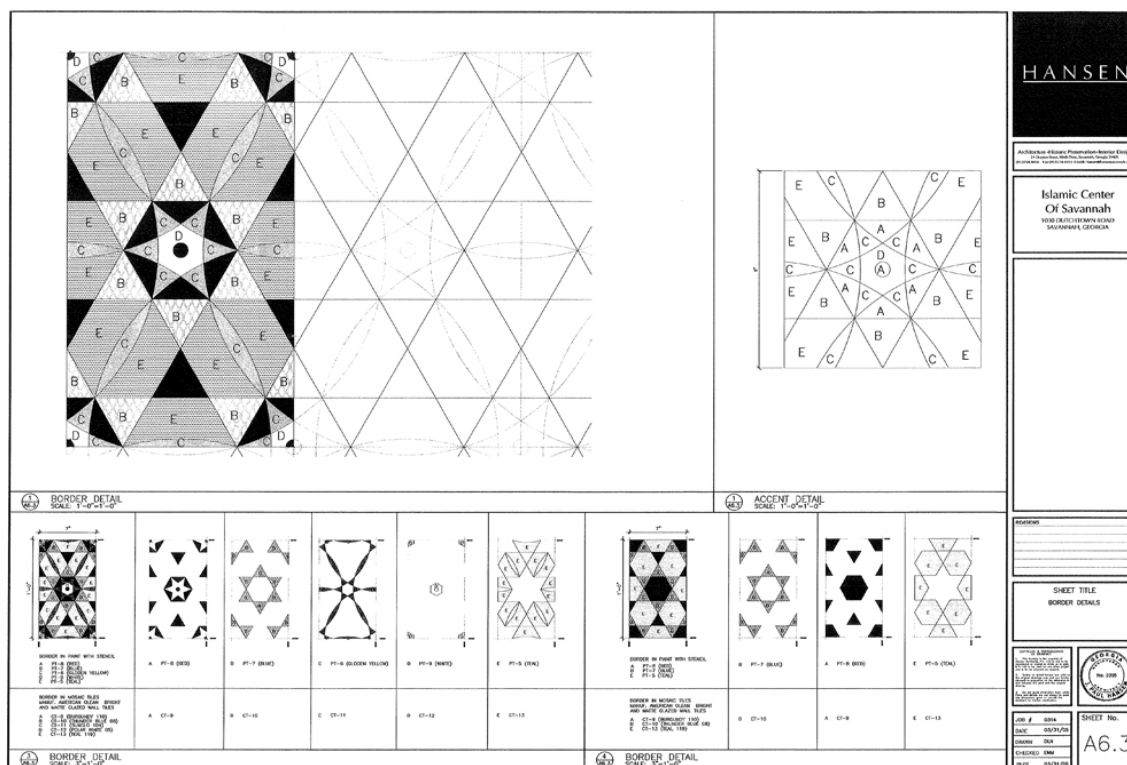


Figure 6.10 Sample interior design plans, Islamic Center of Savannah. Patrick L. Phelps, AIA, LEED AP, Architect.

Geometric tiles in rich blues and reds showcase the *mihrab* (a niche representing the place Prophet Mohammed stood to preach in the first mosque, and which indicates the direction of Mecca) and unify the windows in a grand, sweeping gesture. The meditative effect of repeated pattern delivers a sense of the ethereal, setting the space apart from the everyday. The window glass nestles behind decorative metal grid work, which filters sunlight and creates dramatic interior shadows. Masonry honeycomb screens served the same purpose in medieval mosques.<sup>554</sup>

<sup>554</sup> Phelps said that this gridding served the dual purpose of security, both against break-ins and against the potential for shattered glass in the case of another hate crime against the Islamic Center.



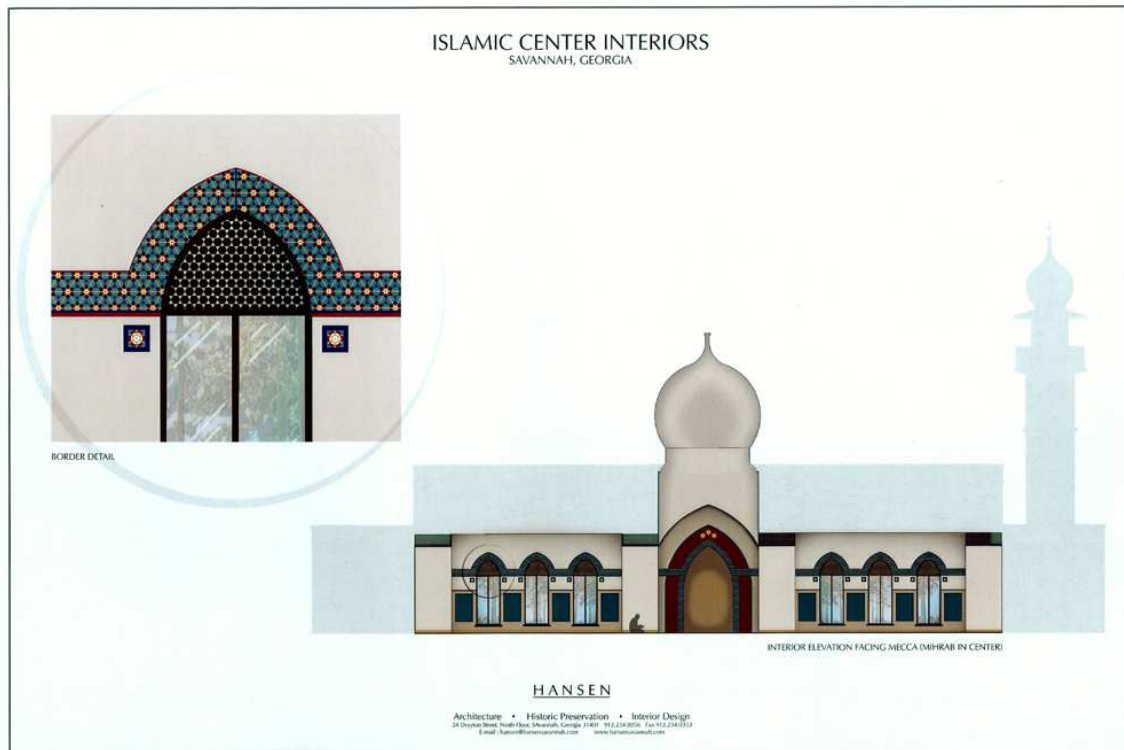


Figure 6.11 Color plate of interior pattern plan, Islamic Center of Savannah. Patrick L. Phelps, AIA, LEED AP, Architect.

When I first met Dr. Masroor in 2005, the above drawings were still in development and he proudly spread these drawings before me. He was immensely satisfied by them, and explained that they felt very comfortable for him as a Muslim. He believed strongly that for his fellow Muslims the design would convey a sense of sacredness and tranquility, while for non-Muslims they would act as a physical representation of all things beautiful in his faith. Alas, budgetary constraints would ensure that the design was executed in a much modified version, and, while Dr. Masroor's hopes are in fact realized by it, the modest brick structure is a shadow of what it might have been.



*Figure 6.12 Realized primary façade, Islamic Center of Savannah, April 2008. Photo KE Foley.*



*Figure 6.13 Primary entrance portal and side entrances, Islamic Center of Savannah, April 2008. Photo KE Foley.*



*Figure 6.14 This is the qibla wall that indicates the direction of Mecca—the direction that Muslims face to pray. Although it is the “street face” of the Islamic Center of Savannah, it is in fact the rear of the building. To accommodate orientation to Mecca, mosques will frequently be positioned with their front doors and primary facades away from the street or otherwise set off the traditional American street grid. Photo KE Foley.*

As the dream of building the Islamic Center became reality, hard choices had to be made. While design was important to the Muslim community, paramount was the simple need for a functioning prayer hall. The arduous, sometimes painful task of prioritizing needs over desires dropped a number of functions from the immediate completion list, and placed them in a phased plan. Among these were the primary dome, the imam’s apartment, and an accessible minaret (as designed, the minaret would have included a code-compliant staircase and habitable balcony that could accommodate calls to prayer on special occasions<sup>555</sup>). Still, the community had the foresight to spend up front to ensure that the structure is engineered and built to accommodate these non-essential elements when funds are available. That is, the supports are in place to one day carry the weight of the dome; the structural elements necessary to bear the

<sup>555</sup> In discussing the decision to build a minaret when it would not regularly be used to make the call to prayer, Dr. Ahmed commented: “Even in the Muslim countries today’s minarets are not used for the call to prayer. . .even in Pakistan [the doctors’ native country] there [are] no masajid where [an *adhan*] goes into a minaret. They just have to amplify and [they] can put [the call] anywhere. Okay, so this is a symbol, even in the United States today’s masajid if they have a minaret, it’s just a symbol. Many, many, many, many masajid, majority of masajid they do not have a true minaret.”



minaret are built into one of the *wudu* (ablution) areas; the upper story is roughed out to accept the finish of an imam's apartment when possible.



Figure 6.15 Mihrab with structural supports above that will accept the future installation of a dome. Photo KE Foley.



Figure 6.16 Structural supports in ablution area installed in preparation for the future construction of a minaret. Photo KE Foley.

Sadly, the subtleties and sophistication of Phelps's design were not manifest; some can be recovered later, others cannot. His lean, elegant windows have been replaced with prefabricated residential windows that ill-fit the openings he designed.



*Figure 6.17 Composite residential window installed on the east façade of the Islamic Center of Savannah.  
Photo KE Foley.*

In addition to the awkward appearance they present, they hold at bay the light that would have flooded the interior. This choice was made not only as a cost savings, but, after the shooting in the house, some members feared that windows reaching the floor might invite other attacks on worshippers. More problematic, however, is the addition of a second, informal designer. A Muslim builder, experienced with mosque construction in Atlanta, offered his services to the Savannah community at a reduced rate. The community simply could not afford to decline his generosity, and his eye and hand are evident in the executed structure (see Figure 6.18).



Figure 6.18 Ablution area with tile patterns designed independently by the ISC contractor. Photo KE Foley.

Although my photographs show the structure before it was complete, even at that time, the departure from the architect's design and the influence of the builder are clearly seen in the entrance portal, the windows, and the *wudu* (ablution) area. Although beautiful in its own right and surely a showpiece in the neighborhood, by comparison to the original design, the executed structure is rather amateur and plain. The refined, sophisticated look of the Phelps design is lost. Said Phelps:

...the forms are different, and [the builder] put a lot of...his...artistic thoughts of what should go on [in the building] so [what you see at the mosque is] not [my design]. You'll see the basic plan, but that's all that's left of it...Honestly I'm disappointed; I mean I do think there could have been a stronger presence made if the right materials were used. [But] I [do] understand the restrictions [they faced].

Architectural criticism is entirely subjective and rarely accounts for the satisfaction of the client. Using the Muslim community's sentiment toward the structure as a gauge, the Islamic Center of Savannah is a complete success. I attended *jum'ah* prayers in the temporary trailer, then toured the nearly finished building. The members with whom I spoke were universally enthusiastic about the new center and all the possibilities it creates for them. They think it an elegant, beautiful building of which they can all be proud, and which makes an aesthetically pleasing contribution the neighborhood. As planners Moore and Plumbley pointed out, the architecture of the neighborhood was already diverse because of its varied uses. The mosque is an attractive expansion of that diversity.<sup>556</sup> No one I interviewed for this chapter was aware of any dissatisfaction on the part of neighborhood residents. Truly, there can be no more favorable outcome than the pleasure of a building's users and its acceptance by the community.

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### **PART XIII: DESIGN AND SITE PLAN REVIEW**

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With the issues of zoning and use resolved for the mosque site, the only required review for the new construction was design and site plan. Outside of Savannah's historic districts, design review by staff planners and boards is limited. Big issues are addressed: height, lot coverage, traffic and infrastructure improvements, grading and paving, and landscape plans (Savannah places special emphasis on tree retention, vegetative cover and buffering). However, beyond safety compliance there is no review of forms, material palettes or colors. The final review for the mosque, then, focused primarily on its placement on the site, trees to removed and retained, lighting plan and the density and placement of its buffers. It was contained within one hearing; only three weeks passed between the plan's submission and its approval.

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<sup>556</sup> Moore and Plumbley, *op. cit.*

There was no public comment for the site plan review, but one of the two neighbors who spoke against the upzoning approached the doctors personally about the placement of the required privacy fence. She expressed concerns that pedestrians from Dutchtown Road might cut through the mosque parcel and onto her property in order to access commercial uses on Mohawk Street.<sup>557</sup> Her worries were resolved privately and were never mentioned in public hearing.

Missing from the Savannah mosque review was any controversy regarding occupancy and parking. Because the future size of the Muslim community was not known, Phelps worked with projections provided by his client. He applied them to formulas prescribed by the International Building Code, which is the adopted building code for the state of Georgia. For the prayer hall, he used the calculation for assembly without fixed seats (seven square feet per person); for the meeting rooms, a calculation accounting for tables and chairs, and then the standard classroom occupancy accounting for desks. The prayer hall occupancy—roughly 300—would allow a greater number of worshippers than the doctors would have expected for normal *jum'ah* assembly (around 100). However, they were taking into consideration the prospect of swollen numbers at the time of the two Eids, when they hoped the center would serve as an assembly point for Muslims across the region. The straightforward and sure declaration of occupancy allowed a simple calculation of parking needs. The zoning ordinance is clear, mandating a 1:8 ratio for parking spaces to occupants.<sup>558</sup> Although only 30 were required, the applicant requested permission to build 39.<sup>559</sup> Again, this speaks to wise site selection: a sufficiently large

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<sup>557</sup> Masroor and Ahmed, *op. cit* and Saxman, *op. cit*.

<sup>558</sup> Moore and Plumbley, *op. cit.* and staff report to the Metropolitan Planning Commission for Site Plan review, MPC file number P-040316-60300-2, 5/4/2004.

<sup>559</sup> The Islamic Center would later revise its plan to accommodate six additional spaces. The project engineer felt that the rainwater detention designed for the site was "overkill" and could easily handle the potential runoff generated by the comparatively small amount of impervious surface the spaces would create. Even with those additional spaces, the site plan still exceeded city requirements for green space and landscape requirements. Memo from EMC Engineering Service, Inc to Alvin McGrath, City of Savannah Engineering Department, 11/30/2005. Approval for amended site plan application noted in file 12/5/2005.



site allowed the accommodation of ample parking and removed that potentially conflictual element from the review process.

The conditions placed on the Islamic Center's approval were mostly boilerplate. Even those that were not, such as erecting the privacy fence inside the vegetative buffer rather than beyond, were not considered onerous either by the planners or the doctors. The site plan was approved in May 2004 and ground broken on October 21<sup>st</sup>, 2005.

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## **PART IX: ANALYSIS OF CONFLICT, OR THE LACK THEREOF**

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The review of the Islamic Center of Savannah was decidedly lacking in conflict. The site and circumstance specific reasons are perhaps less generalizable to other development scenarios than the details of the Voorhees and Scottsdale cases, but still there are lessons to be learned from their analysis.

### ***Site Selection***

Although Savannah's Muslim leadership did not necessarily consider potential neighborhood opposition when selecting a site in a mixed-use/transitional neighborhood, the choice clearly was helpful in their smooth review process. The neighborhood already hosted a housing types and of uses, including religious institutions, and was less disrupted by a new, non-residential use than the mostly single-family neighborhoods around the Voorhees and Savannah mosques. And, unlike those cases, the Savannah mosque was not perceived to imperil surrounding property values.

### ***Streamlined Municipal Review***

Selecting a parcel for which the permissibility of a religious land uses was already determined streamlined the approvals process for the Savannah mosque and avoided the potentially charged questions related to the use's appropriateness and compatibility which so dominated the Voorhees review. Additionally, the zone had few design guidelines, so the introduction of a new building typology was far less controversial here than in Scottsdale. As has been discussed, the traditional design elements of a mosque are currently considered atypical in the lexicon of American architecture. Had the Muslim community proposed the mosque in Savannah's city center, design guidelines that would have limited the inclusion of a minaret, for example, may have resulted in a more contested, contentious process. Instead, in Forest River Farms, only broad brush issues such as roof height, floor area ratio, and lot coverage were under consideration and proved uncontroversial for neighbors and the review board.

### ***Involvement of Experienced Professionals***

Not every Muslim community can afford to hire consulting professionals, but when possible, their assistance with an application can be invaluable. The Savannah community had the extraordinary good fortune to work with a recently-retired, very senior member of the city's planning staff. Although that particular scenario is not likely to repeat often, the benefit in the Savannah case is clear. Mr. Saxman had familiarity with codes and ordinances and could anticipate potential problems with the application. He was able to work directly and proactively with city staff to resolve them. Additionally, his participation in review sessions contributed a sense of trustworthiness to the application which seems to have informed board members' reception of it. Most importantly, Mr. Saxman's credibility and personal outreach efforts in the neighborhood seems to have made a meaningful difference in the community's response to the project. From a design standpoint, the architecture firm selected by the Dr. Masroor and Dr. Ahmed had considerable exposure among Savannah's review boards. Their past record of approved projects lent an additional degree of credibility to the application.

### ***Public Faces of the Islamic Center***

The good reputations of Drs. Masoor and Ahmed also added credibility to the Islamic Center proposal, and continue to bolster the institution's standing. Using representatives with social, business and political contacts across a broadest spectrum of the municipality smoothed the neighborhood's and municipality's reception of the proposal. And, although there was no controversy in the review that required a supporting coalition like those launched in Voorhees and Scottsdale, one can imagine the role that widely-respected representatives would play in creating one from among disparate demographics. Certainly, the renown of the doctors and other members of the faith community helped to rally the interfaith response to the firebombing of the first mosque structure.

### ***Responsiveness to Neighborhood Concerns***

Neighbor opposition was a very minor factor in the review process for the Islamic Center of Savannah, but in the one case in which a neighbor had a complaint (regarding buffering), the Muslim community met her request. Like the Scottsdale faith community, the doctors recognized that an up-front investment in neighbors' needs would result in their support for the application and a positive long-term relationship.

### ***Neutral Treatment of Application by Municipality***

Several common sense strategies deployed by the Metropolitan Planning Commission's professional planners seem likely to have mediated potential tensions in the Savannah review. Most significantly, the neutral treatment of the application offered the Muslim community equal access to land use laws, and the full exercise of their rights under those laws. That is, public hearings were advertised as being for the review of a religious facility or worship center, and not a mosque. This broad label set the center on equal footing with the proposal of any other religious entity and did not invite knee-jerk reactions based on prejudicial associations of mosques with geopolitical events and related fears. Process neutrality also meant that the

function of the Savannah mosque was addressed as would that of any other public building, focusing on the facts of use and relying upon accepted codes and standards. That Muslims pray without seats was never a matter of contention as it was in Voorhees—the fact was simply addressed as it would be for any other standing assembly space, and the appropriate occupancy calculation was applied.

Finally, the collaborative, negotiating culture of the Metropolitan Planning Commission allowed for conflict management before the application ever reached public hearing. The staff's experience with application review and problem solving reduced potentially controversial variables in the public process. Such a calm and systematic approach was surely aided by the fact that there was little public scrutiny for the case. In a conflictual case, pressure on municipal officials might force such private negotiations into public venues, raising the stakes and influencing parties' ability to compromise. The staff did predict that if another mosque proposal were to come before the MPC it would receive a greater, and probably negative, public response. Savannahians are now much more attuned to Islam than they were in the early days after 9/11, they said, particularly referencing the location of several military bases in or near the city and the large number of local families with members engaged in the ongoing wars in Iraq and Afghanistan.<sup>560</sup>

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## CONCLUSION

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When I visited the Islamic Center in April 2008, phase I of the exterior work had been completed—the primary mass of the structure was in place, but the minaret and dome were not constructed. Site work and landscaping were yet to be completed. The Muslim community

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<sup>560</sup> Moore & Plumbley, *op. cit.*

continued to worship in a trailer while the unfinished interior was built out. Still, I was able to get a good sense of the facility's place in its neighborhood context, and I would echo the sentiments of the planners and doctors, who felt that the mosque expands an already diverse neighborhood and does not have a detrimental impact on its surroundings. The structure promises to be a comfortable addition to the streetscape and character of the neighborhood despite its rather dramatic design evolution.

As discussed in the last section, the Savannah case proved to be a contrast to the Voorhees and Scottsdale cases for reasons related to site selection, review process conduct, and neighborhood outreach strategies. Most of these contrasts are the result of the involvement of a seasoned and influential planning consultant, as well as the common-sense approach taken by all parties to the proposal. In their simplicity, the lessons of Savannah are perhaps less striking than those of the other two case studies. In terms of mosque architecture, however, Savannah offers an informative study of design influences and outcomes.

In Voorhees and Scottsdale one sees the impact that public response can have on designs for an Islamic Center. In both cases, neighbors called for modifications that would ensure those mosques "blended" with the surrounding community, even deferred to them. In effect, neighbors asked that the mosques not be recognizable as mosques. Although Scottsdale retained more of its architectural identity than Voorhees, in their modification both lost the essential character intended by that their architects. In Savannah, the same losses were sustained, but for very different reasons: the faith community's nostalgia and budget.

In the first instance, architect Patrick Phelps's attempt to create a low-country mosque, drawing on local historical forms and traditional materials, was lost to the nostalgia of the Muslim community. Such nostalgia is not uncommon in immigrant communities; there is a comfort in the

repetition of traditional, ethnically-based design schemes in diaspora.<sup>561</sup> But in Savannah an opportunity to help forge a distinct form for an American mosque was lost. Phelps's design would have resulted in a decidedly contemporary, inventive structure. I believe it would have been heralded as a breakthrough in the architectural representation of Islam in America.

In the second instance, the derivative design that pleased the faith community was lost to the reality of budgets. It is not simply that the planned dome and minaret could not be built in phase I of construction; the community is committed to building them when funds are available. Instead, the compromises made on craftsmen and materials have transformed Phelps's second, abstract design based on historical antecedents into something remarkable more for its plainness than its religious and ethnic identity. As discussed previously, the stuccoed walls are now bare brick; the elegant lines and colors of the stained glass windows have been replaced by ill-sized vinyl units; the stature and depth of the facades and porticoed entrances have been flattened like a theatrical set. Savannah's tale is not an uncommon among American Muslim communities—the need to compromise on dearest desires for the sake of fiscal constraints.

Although financial restraints and the challenge of seeking design consensus within a faith community have been considered to some degree in this chapter and to a degree by other scholars of Islam in America, they have not been considered in combination with the outcomes of municipal review. Navigating the competing demands of dollars, desires and a demanding public will be addressed in the analytic chapter that follows, and then proposals made for further research in this work's conclusion.

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<sup>561</sup> See Omar Khalidi, "Approaches to Mosque Design in America," Chapter 13 of Haddad & Esposito, ed. *Muslims on the Americanization Path?* New York: Oxford university Press, 2000. Pages 317-333.

## CHAPTER VII SYNTHETIC ANALYSIS

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### INTRODUCTION

As the chapters IV-VI illustrate, each case study is unique in its location, circumstances and outcomes. Examined in isolation, each might appear to have limited value because its particular configuration of factors is not likely to be replicated in another municipality. Considered in aggregate, however, the value of the case studies is more universal. This chapter relates the findings of the case studies to the work's hypotheses and overarching research questions. Subsequent chapters build on this intellectual framework, presenting recommendations for other municipalities, faith communities and neighborhoods addressing mosque development proposals, and proposing implications for theory and policy in several areas.

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### PART I: OUTCOMES FOR STUDY HYPOTHESES

**AH1**      ***Land use conflicts around mosque developments are not necessarily based on fear and discrimination or motivated by desires to exclude Muslims.***

**Outcome**      ***Supported***

Fear, bias, and discrimination undeniably played a role in the opposition to the case study mosque development proposals. In Voorhees, it was manifest in written and spoken public comment and motivated an anti-Muslim flyer distributed prior to critical public hearings. Some opponents reportedly strategized effective means to cloak their bias in traditional land use concerns. Fear and bias also were evidenced in deliberations of a minority of zoning board

members. Similarly, Scottsdale's review process was infused with spoken and written comments that indicated bias. Interviewees described discriminatory sentiments expressed in private meetings, and a review board member spoke of the threatening environment created by the strong desire to exclude Muslims from the neighborhood. Although the Savannah mosque was not opposed in its review process, the faith community experienced violent hate crimes, including having their building firebombed.

However, my careful analysis of the planning context and development history in Voorhees and Scottsdale revealed the significant land use roots for the mosque conflicts in those municipalities.<sup>562</sup> For most neighbors, land use concerns were meaningful and important. As with any other type of new land use, the mosques proposals bore carry-over impacts from previous projects and development scenarios. In Voorhees, perceived uneven development in the township, traffic burdens from the modification of a major commuter roadway and parking issues stemming from an adjacent private school all contributed to neighbors' trepidation over the outcome from the mosque development. In Scottsdale, I observed that the rapid and intense pace of the previous five years' housing boom created a sense of development fatigue among neighbors. Those same neighbors, because of housing values and existing codes and ordinances with which they had themselves complied, were heavily invested in the aesthetic and functional status quo in the community.

The Voorhees and Scottsdale case studies, therefore, support the hypothesis. Fear and bias, though present, meaningful and traumatic in the public review process, were not the singular or most significant drivers of opposition. Rather, the actions and words inspired by prejudice and fear tended to overshadow traditional land use concerns, creating the perception that they were

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<sup>562</sup> In Savannah, public resistance related to changes on the development site did occur as part of its previous upzoning but not as part of the mosque review.



the leading cause for project resistance, and, importantly, creating a monolithic perception of opponents as driven by bigotry.

**AH2**            ***Actual land use concerns surrounding religious properties, and particularly mosques, do not differ dramatically from other proposed new land uses such as low-income housing, schools, commercial establishments or industry.***

**Outcome**       ***Supported and Expanded***

Interviews with the municipal planners and review board members who participated in the case studies reported that the general land use issues raised in the mosque development controversies were the same as those raised in cases of other locally unwanted land uses. In Voorhees and Scottsdale they specifically cited traffic density, road safety, adequate parking, buffering, and potential impacts of light and noise pollution. And, although the Savannah mosque review had no controversy in its review process, my examination of the parcel's history revealed that when it was previously upzoned to accommodate multi-family housing—itsself a use frequently unwanted by surrounding single family homeowners—concerns about traffic density and adequate neighborhood services for incoming residents were raised by opponents. This litany of concerns is common to unwanted land uses of any type in any municipality.

While the premise of this hypothesis is supported by the information provided above, a more revelatory outcome emerges as one goes beyond the issues to compare the intensity and character of the mosque controversies with those of other locally unwanted land uses. Importantly, municipal officials reported that the degree of controversy surrounding the mosques was no greater than that in other contentious cases. Voorhees planners equated the amount of public response to the mosque to that garnered by a Wal-Mart proposed for a new commercial plaza, as well as by a gas station developers hoped to site on the edge of a residential district.

In Scottsdale, the planner felt that all non-residential uses proposed for upscale single-family neighborhoods received similar scrutiny and contention. He also felt that the level of controversy around the mosque was similar to levels around other religious property developments proposed in residential neighborhoods.

Whereas the planners said the *intensity* of the controversy in the subject mosque developments was not extraordinary, they felt the *character* of it was. The key difference was the degree to which issues beyond the boards' purview influenced proceedings and outcomes. Certainly, issues beyond a review board's purview are frequently raised in the review of any locally unwanted land use, but they tend to focus on local impacts. For example, opponents may conjecture that residents of a low income housing project will exacerbate crime rates in the host neighborhood. But for two of the case study mosque proposals, extra-jurisdictional issues reached the international, geopolitical level as some opponents (and sometimes review board members) attempted to engage debates about American identity and national security during public hearings. For municipal officials, this type of opposition, with sources so disconnected from the actual application and so far beyond their control, felt more frustrating and intimidating than run-of-the-mill exclusionary positions. In particular, the immediacy and emotion of September 11<sup>th</sup>, 2001 seemed almost to have created a chilling effect on hearing management that might otherwise have limited extra-jurisdictional issues. In both Voorhees and Scottsdale, there seems to have been sense on the part of officials that curtailing comments related to the attacks and direct accusations about the local Muslim community was somehow insensitive or offensive to those who raised them. In such an environment, I argue, the applicants—the faith communities—were given unequal protection under land use laws and victimized by the proceedings.

**BH1**            ***Strategies used to address and overcome exclusionary tactics in housing and other developments are applicable to conflict management surrounding suburban mosque developments.***

**Outcome**      ***Supported***

Proven conflict management and resolution strategies from other types of NIMBY and LULU issues were notable in the case studies, either for their presence (Scottsdale and Savannah) or their absence (Voorhees). These include efforts to educate the public on the project; to clearly understand the underlying, root causes of opposition and acknowledge those concerns; to focus on the facts and requirements of an application rather than emotional responses; to negotiate on controversial aspects; to identify alternative solutions to problematic elements; and to mitigate real and perceived impacts of the project. In Scottsdale, these conflict reduction and resolution strategies were largely undertaken by the faith community, while in Savannah, it was the consulting planner who primarily interfaced with the municipality and neighbors. In the two contested cases, Scottsdale and Voorhees, the applicants addressed the articulated land use concerns of opponents. When no apparent plan-related opposition remained that had not been addressed to some degree, it was reasonable for the applicants and the municipalities to assume that fear and bias shaped remaining resistance. This methodical approach to addressing opponents is a commonly recommended strategy for revealing exclusionary desires in other types of unwanted land use proposals.

Another tested strategy for overcoming opposition and winning community support for land use projects is the formation of supporting coalitions. The tactic was deployed in both Voorhees and Scottsdale, with nuanced outcomes. In both reviews, the participation of supporting coalitions had noteworthy positive impacts on the public perception of the two mosque proposals, and added moral and ethical pressure on municipal officials to approve them. However, the interfaith alliances cannot be said to have reduced conflict. In fact, they created resentment among some

municipal officials and opponents who had genuine land use concerns. Coalition members were perceived as interfering outsiders who had no standing in the cases. Further, their focus on religious freedom was felt both to divert attention from legitimate land use issues and shape monolithic vision of all opponents as bigots.

**BH2            *Community outreach and education efforts on the part of the Muslim American communities mitigate conflict around mosque development proposals in American suburbs.***

***Outcome       Supported***

The efforts of the subject faith communities and their consulting professionals to inform the public provided undeniable evidence of the value of outreach and education in mosque development controversies. In Savannah, advance outreach by a trusted planning professional and former public official helped ensure that there was no expressed neighbor opposition to the mosque project. In Scottsdale, the Muslim community went far beyond what was required by city ordinances that already emphasized outreach as a matter of course. While their efforts did not quell all opposition, ongoing communication and openness made possible project compromises that satisfied the most pressing concerns of neighbors. Importantly, the faith community's outreach efforts demonstrated their commitment to neighborliness and the preservation of the area's quality of life. Almost the opposite is true for the Voorhees case, where insufficient outreach in advance of and during the mosque proposal resulted in misunderstandings, mistrust, bitterness and a prolonged public process. The Voorhees Muslims did learn from their negative experiences, and after the review process was completed undertook a concerted neighborhood outreach program. My return visits to the municipality to observe subsequent land use hearings for the site and conduct follow up interviews with

residents revealed shifted neighborhood perceptions and positive relationships. It seemed clear that in Voorhees, even a late outreach campaigns was better than none.

**CH1**            ***The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) can catalyze decisions on mosque development proposals, but does not necessarily resolve conflict in those cases.***

**Outcome**      ***Supported***

The case study mosque proposals were reviewed in the early days of RLUIPA, when its boundaries had not yet been well defined; in fact to a great extent ten years on they are still being defined. In the study period, however, municipalities and their attorneys often incorrectly thought that the act nearly gave religious land uses an exemption from local zoning and landmarking regulations. As a result, the mere mention of RLUIPA was enough to turn the tide in cases in which exclusionary efforts were being undertaken by opponents, municipal officials or both. When the RLUIPA gauntlet was thrown in the Scottsdale and Voorhees cases, the review processes undeniably shifted in favor of the Muslim communities. In Scottsdale, reference to RLUIPA in the final land use hearing brought proceedings to a swift and positive outcome for the mosque proposal. In Voorhees, RLUIPA did not necessarily speed the rate at which the proposal was approved, but it did influence the votes of some zoning board members. At least two publically cited RLUIPA as the reason they felt compelled to vote in favor of the faith community's use proposal when they likely would not have otherwise, particularly in the face of strong public opposition.

At the same time that RLUIPA ensured positive outcomes for the Scottsdale and Voorhees faith communities, it also increased tension and resentment among some opponents and municipal officials. Neighboring property owners I interviewed in both locations reported feeling that

RLUIPA gave the religious land use an unfair advantage in municipal reviews. That is, they perceived that the religious use was given more lenience in terms of compliance requirements than private property owners would have been. In reality of course, both applications met established use criteria as well as requirements for their zoning district and the building codes. Among some opponents, there was a perception that because of the legal protections RLUIPA extends to religious use applicants, the faith community was able to trample the “rights” of private property owners; that is, owners’ ability to protect the value of their property and the character of their neighborhood. That is, some neighboring property owners felt forced by RLUIPA to accept a use that they felt was inappropriate to the neighborhood. I contend that this criticism is less about RLUIPA itself and more a result of ignorance about existing zoning in these neighborhoods, and the range of uses that actually were allowable as of right. In reality, RLUIPA does not force the approval of any religious use that is justifiably inappropriate to a neighborhood based on sound and lawful planning principles; it simply requires the equitable treatment of religious assemblies and secular assemblies by municipalities, as well as the execution of public review in a rational, fact-based process that is demonstrably unbiased and fair.

**CH2**            ***When municipal planning documents—comprehensive plans, zoning ordinances, and zoning codes—anticipate religious land uses and neutrally address them, conflict in suburban mosque development is mitigated.***

**Outcome**      ***Supported***

At the time the case study mosques were being reviewed, RLUIPA’s requirements for zoning codes and other ordinances to enshrine neutral, equitable treatment of secular and religious assemblies were only beginning to be addressed by local municipalities. Compliance was being achieved, and continues to be achieved, in the process of proactive comprehensive plan

updates and/or when municipalities have their hands forced by legal challenges from religious land use applicants. Neither condition had occurred in any of the three study municipalities, so they could be fairly compared to test this hypothesis.

Given the heat of geopolitical circumstances at the time of the case study proposals, and even as of this writing nearly a decade on, it is unlikely that neutral treatment of assemblies in a zoning code would have much reduced the furor of public response to a mosque proposal; I doubt that it would have made any significant difference in the neighborhood reactions to the Voorhees and Scottsdale reviews. Where I saw a meaningful impact was in the degree of struggle at particular process points. The best illustration is the calculation of occupancy and parking. In Voorhees, as in many municipalities prior to RLUIPA, the zoning code and building codes referred specifically to churches and synagogues and based calculations on the traditional model of seating in pews. The township's staff and consulting planners, as well as zoning board members, were almost paralyzed by this formulation and had great difficulty addressing occupancy in a prayer hall without fixed seating. Opposition members seized upon the question, crafting it as an irreconcilable difference and stalling the approvals process. Further, the occupancy question became a proxy for the compatibility of the Muslim community with American culture generally and the neighborhood specifically. In Savannah and Scottsdale, however, where all types of houses of worship were treated equally in the municipal codes, the question of occupancy wasn't even an issue. Standard occupancy calculations for all types of assembly were drawn upon as normal procedure regardless of the faith making an application.

The faith-neutral ordinances and codes in Savannah and Scottsdale helped ensure the equitable treatment of the mosque proposals in those cities with other religious land use proposals. The planners in both cities commented that although the drama of the geopolitical circumstances surrounding the cases made them unique, from a process standpoint the

applications were entirely workaday, and their review was standard. Regardless of the type of faith housed in the spaces and by whom it was practiced, from a land use perspective the reviews were about checking the proverbial boxes on the list. A clear process with neutral compliance standards, therefore, is beneficial for two reasons: (1) it reinforces—for municipal officials and opponents—the concept and importance of equal development rights among religious groups; and (2) it reduces the opportunity for contention around process issues, thereby allowing the allocation of resources to the mitigation of project elements that actually impact the surrounding community.

**DH1**                    ***Public planners and municipal officials experienced in the management of conflictual land use proposals of any type are better able to manage and reduce conflict in suburban mosque developments than those without such experience.***

**Outcome**            ***Supported***

Among the planners who participated in this research, those more experienced with conflictual land use proposals seemed to have been better prepared to address and diffuse tensions in the subject mosque proposals. They were more capable of anticipating contentious issues and diffusing them in advance of public sessions. They were able to recognize objections that were typical NIMBY responses, then draw on their past experience with locally unwanted land uses to address those responses. Their perspective seemed to enable them to stay focused on the facts of the development cases and helped them to avoid being drawn into in the drama of fear and bias based objections.

Another key factor in the public planner's ability to manage conflict in the subject mosque cases is his or her access to the applicant and at what stage. In Savannah and in Voorhees, the staff planners were able to meet with the applicants and/or the applicants' representative in advance of the projects' public review. That meant they were able to bring their knowledge of codes,



ordinances, neighborhood dynamics and review board dynamics to bear on conflict reduction. That is, they were able to anticipate aspects of the proposals that were not in compliance with codes and ordinances, and/or would likely be poorly received by the neighbors or review board members. Addressing the obviously problematic aspects of the proposals in advance reduced the baseline for contention before the proposals reached public session. The time in those sessions, therefore, could be used more productively to address land use concerns and improve the proposals.

In Voorhees, by contrast, very little advance contact was made between planning officials and the faith community, so few proactive modifications were made to the application that might have reduced conflict in the public review process. Significantly, that limited contact was conducted by consulting engineers and not the township planning staff most familiar with the personalities and sensitivities of the surrounding neighborhood. Further, throughout the review process, those same staff were limited by the township's consultancy structure in the degree to which they were empowered to broker conflict resolutions.

**DH2                      *Public planners and municipal officials experienced in the stewarding of religious land use proposals are better able to manage and reduce conflict in suburban mosque developments than those without such experience.***

**Outcome              *Supported***

My findings in this regard were similar to those for the previous hypothesis. The planners who had staffed religious land use proposals in the past were better prepared to deal with analogous conflictual elements in the mosque proposals. They recognized particular aspects as universal to religious land uses—parking, traffic, noise and light interruptions—and not symptomatic of a

particular incompatibility of mosques and American suburban neighborhoods. That meant that they were able to address them as a matter of course in the review and draw upon their experiences of successful resolutions. Still, none of the planners in this study had experience with reviewing a mosque in particular, and needed to be educated about use patterns as that might impact the surrounding neighborhoods (i.e. prayer times, the call to prayer, high holy days). Especially in Voorhees, ignorance about mosque use among planners and other officials led to confusion and conflict escalation.

***EH1                      Public reaction to mosque development proposals influences Muslim American communities' decisions to pursue distinct versus assimilative designs for their religious facilities.***

***Outcome              Supported, Conditionally***

The designs for the case study mosques, and motivations for those designs, represent three very different circumstances and responses. It is difficult, therefore, to draw a single conclusion for this hypothesis given the study's sample size.

The greatest degree of design modification based on public comment occurred in the Voorhees mosque proposal, but its changes had little to nothing to do with the design's recognizability as a structure to be used by Muslims. In fact, from the beginning the Muslim community embraced an assimilative design for the very purpose of appeasing neighbors and avoiding conflict; the plan was residential in scale and form and had no design elements, such as a dome, minaret or keel arches, that the public generally associates with Islam. Even as redesigned in later stages, the architect's vision drew not upon Istanbul or Rabat but on classical Greek and Roman elements as well as the octagonal forms of local, historic agricultural buildings; it looked more like a bank or civic structure than a mosque. Still, opponents insisted upon a structure that

looked “residential” and similar to the houses around the development site. The finished product is assimilative even beyond not being recognizably Islamic; given its scale, roofline and fenestration pattern it is almost unrecognizable even as a public building. And, while in the end not unattractive, it is not what the Muslim community had intended for its mosque. The completed Voorhees mosque is a direct result of the negative public response to the proposed design. Most importantly, it is the result of the Muslim community’s distaste for continuing to do battle with neighbors and the zoning review board. In effect, the community’s leaders gave the neighbors what they asked for, and therefore the case study supported the hypothesis.

Although as built phase I of the Scottsdale mosque is much modified in terms of height and color palette, it is recognizably iterative of its initial design and is strongly Islamic in form. The modifications made to the design based on public comment resulted in a building that is respectful of and harmonious with its neighbors but does not disappear among them. The complex’s distinction as an Islamic institution—signaled by a pishtaq portal, keel arches and decorative motifs—will only be reinforced when its off-grid prayer hall, dome and minaret are constructed in later phases. In Scottsdale, the hypothesis is not necessarily supported. Although the Muslim community made design modifications in response to public reaction, they were not modifications that resulted in an assimilative design.

In Savannah, the mosque design received no public reaction and therefore the hypothesis could not be tested in the case study. Notably, however the design changes made by this Muslim community were the result of two other factors. First, the choice of a traditional design versus an innovative one was due to the aesthetic preferences of community members. Second, the downgrading of materials and forms in the final construction was the result of financial considerations—the community simply did not have sufficient funds to fully realize its architectural aspirations.

**EH1**                    ***Concessions made by Muslim American communities to requirements of local land use officials and requests of neighboring property owners result in greater modifications in the design of their religious properties than to facilities developed by other faiths.***

**Outcome**        ***Supported***

In Voorhees, I reviewed the public file for a protestant church approved in the same time period as the mosque proposal<sup>563</sup> and found evidence of the inequitable treatment of the mosque application. The Alliance Church proposal was far more use-intensive than the mosque would have been, including a full-time day care and weeknight community services. Although the planning board reviewing the application had concerns about traffic, there was little controversy in resolving problems and forging compromise. Significantly, there is no record of any discussion related to the details of the form of worship that would be conducted in the building, nor of any discussion of the architectural design for the church—two topics intensively and inappropriately covered in the mosque review. In terms of design, Alliance Church was a good contrast for the mosque case since, like the mosque, it was located outside an historic district and not been subject to design standards. Accordingly, the conditions for the church's approval do not mention any design considerations. By contrast, the Muslim community was asked to make numerous design modifications as conditions of project approval. As further evidence for the Muslim community's unequal treatment, a post-card campaign conducted by its supporting interfaith resulted in a flood of correspondence which stated: "I urge the board to follow standard procedures, rather than require the Muslim American Community to adhere to higher standards."<sup>564</sup> These two sources, as well as the accounts of interviewees, demonstrate that the Muslim community made greater modifications to its design than other faith groups had done; the hypothesis, therefore, was supported in Voorhees.

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<sup>563</sup> Drawn from documents found in the major site plan application for Alliance Church. Reviewed by the Voorhees Township Planning Board June 2001-April 2002. Held in the public files of the Voorhees Township Planning Department; examined by the author June 2006.

<sup>564</sup> Almost 200 such postcards were found in the file "Muslim American Community Association," Voorhees Township Planning Department, reviewed June 2006.

Although I was not able to access the files for other religious structures approved by Scottsdale's Design Review Board, I discussed them with interviewees and visited surrounding houses of worship to get a sense their outcomes. The planner and review board member I interviewed both stated that the design modifications that were made by the Muslim community, particularly the site's excavation and lowering of the structure, were more drastic than those made by other houses of worship. And, as detailed in the Scottsdale chapter, when I compared the color, height and form of the mosque with the Roman Catholic and Congregationalist facilities in the neighborhood, they do not blend with the desert palette, surrounding heights, or residential forms as the mosque was asked to do. Those churches were reviewed right before and after the mosque by similar configurations of the design review board, suggesting that there was either less intervention by the DRB and/or less negative public reaction to their designs. I believe, therefore, that the hypothesis is supported in the Scottsdale case, as well.

The only modifications requested of the Savannah community related to the site plan, so the hypothesis could not be tested in that case.

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## PART II: FINDINGS FOR RESEARCH QUESTIONS

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**RQA**      ***What factors motivate conflict around mosque developments in America's suburbs?***

### Variables That Increased Conflict

Of the twenty-six independent variables hypothesized to impact the degree of conflict in suburban mosque developments, five emerged as leading catalysts: the events and aftermath of September 11<sup>th</sup>, 2001; the selection of development sites in residential neighborhoods;

neighborhood development status and history of conflict; the degree of the host community's experience with Islam/Muslims; and the management of the public review process.

### *September 11<sup>th</sup>, 2001*

To hold September 11<sup>th</sup> and its geopolitical repercussions constant in the study, I particularly chose three mosque development reviews that were proposed in the eighteen months following the attacks. As I expected, comments and discussions related to September 11<sup>th</sup> raised emotions and tensions more than any other issue addressed in the cases. The drama they created also posed the greatest challenge to hearing management. In Voorhees and Scottsdale, opponents openly referenced the attacks. Intimations were made that the faith communities had potential ties to terrorism and/or were likely to conduct terrorist activities from the mosques. Additionally, some opponents raised the possibility that violence would be perpetrated against the mosque and create a different kind of danger for neighbors. Further, rhetoric related to September 11<sup>th</sup> specifically and terrorism generally drew focus away from legitimate land use concerns, frustrating the opponents, municipal officials and the Muslim American applicants who were trying to raise them and resolve them. This frustration additionally exacerbated tensions.

### *Neighborhood Type: Residential*

Site selection was a critical factor in determining the degree of conflict in the case studies. The two mosques sited in or bordering single-family residential neighborhoods—Voorhees and Scottsdale—experienced a far greater degree of conflict than the Savannah case, which was located in a mixed-use neighborhood. Today, religious properties of all faiths host a range of activities that continue beyond a single morning of worship. They provide a range of services and activities that extend throughout the week and into evening hours, making their noise, traffic and lighting impacts real and nearly constant. Single family homeowners worry that their quality

of life and property values are reduced by the addition of a house of worship, and, as was shown in the case studies, they resist its approval.

#### *Neighborhood Development Status and Recent Conflict History*

The rate at which a neighborhood was developing, and the perceived quality of the development, was observed to increase conflict in the case studies. The rapid development that the Scottsdale neighborhood had experienced in the five-year period leading up to the mosque proposal primed the pump for resistance to any additional large-scale development in the neighborhood. Perceptions of uneven development in Voorhees led residents to feel as if they were having yet another unwanted land use foisted on their neighborhood. Further, a dearth of remaining open space in a neighborhood seems to increase tensions around the use of vacant parcels. Significantly, recent and/or memorable local land use conflicts also were observed to set the stage for increased tensions in the case study mosque proposals. A neighborhood's experience with traffic, parking and similar nuisance impacts in previous developments also increases its vigilance around the same concerns in later development proposal reviews. Such existing sensitivities to development pave the way for controversies regardless of the proposed land use, or, in the case of religious land use, regardless of the faith group proposing a house of worship.

#### *Host Community's Experience with Islam/Muslims*

Ignorance about Islam and Muslims contributed significantly to levels of conflict in the Voorhees and Scottsdale mosque proposals. Assumptions about Muslims, their creed and their rituals, combined with negative, media-generated images of Islam, shaped public response and, in some cases, municipal officials' responses, to the proposals. To address stereotypes and misinformation, the Muslim communities had to invest time and human resources in educating the public, on a very basic level, about their faith, its practice and its spatial requirements. In

process, they also were placed in the impossible position of responding to fears based on geopolitical issues for which they were not responsible and over which they did not have control. Particularly in Voorhees, but also to a notable degree in Scottsdale, having to provide a tutorial on Islam—i.e. answering such questions as “what is a Muslim” and “what will they do in that building”—often superseded meaningful explanations of the projects and their actual impacts. Importantly, this placed the Muslim communities in a defensive position from the outset of their applications and contributed to the combative nature of public sessions.

### *Management of Public Process*

When the public process in the case studies was not managed to keep focus on the merits of the application and matters of purview, conflict and tension escalated. For municipal officials, making the call to curtail extra-jurisdictional discussion, particularly related to September 11<sup>th</sup> 2001 and terrorism, placed them in the position of quelling their fellow community members’ expressions of fear and grief over a national tragedy; several reported feeling torn between their duty to adjudicate and their desire to respect those emotional needs. Without curtailment, speakers who were allowed to make fear and bias-based comments in public sessions emboldened others of similar thinking. As a result, the Voorhees and Scottsdale hearings, to differing extents, became venting sessions for the frustration, anger and anxiety of neighbors.

By extension, allowing extra-jurisdictional discussion of Islam and terrorism victimized the Muslim communities by exposing them to abusive and even threatening language. Islam-focused comments were actually the second victimization of the faith communities. Like any other minority group facing public resistance, the Muslim congregations had to address standard exclusionary efforts as well. Regardless of the motivation, however, when extra-jurisdictional issues dominated public hearings, debating the merits of the mosque applications and mitigating their impacts—the concerns actually within the control of the review boards and



those to which they could reasonably respond—was exceedingly difficult and stressful for all stakeholders.

### Variables with Mixed Influence on Outcomes

It is worth briefly discussing several variables that were observed to both increase *and* decrease conflict in the case studies: the engagement of consulting professionals by the Muslim community; the activism of interfaith coalitions; and the political experience of the Muslim community.

#### *Engagement of Consulting Professionals*

As demonstrated in the case study mosque reviews, consulting professionals such as planners, architects, engineers and attorneys can help reduce conflict by designing a successful land use application strategy, including code-compliance from the earliest stages of planning; shaping a smoother public review process by working proactively with municipal officials; assisting in community outreach; ensuring municipal compliance with local, state and federal regulations and the protection of a faith community's development rights. The Savannah case provided an excellent example of the benefits of consulting professionals, with the planner hired by the Muslim leaders managing nearly all of the above. However, I also observed the involvement of consulting professionals as conflict escalators; Voorhees provided the clearest illustration of this idea. Municipal officials and opponents there expressed the perception that the professionals who spoke on behalf of the faith community were “slick” and able to out-maneuver the Zoning Board of Appeals and planning staff. In particular, they felt that the experience and skill of the attorney representing the mosque would have placed the municipality at a disadvantage if the board's decision were to be challenged in court. In assessing the outcome of the application, many felt that the Muslim community had not come into compliance and/or satisfied the opposition through project modifications, but rather that the municipality had been “out-

lawyered” by the applicant, who “steamrolled” through approvals. These perceptions do not suggest that using consulting professionals is unwise for faith communities, but they do suggest that consultants’ participation should be presented judiciously. This concept will be discussed more in the implications chapter to follow.

### *Activism of Interfaith Coalitions*

In Voorhees and Scottsdale, the alliance of an interfaith coalition was a determining factor in shifting public perception of the Muslim communities and their plans, and in providing moral cover for the favorable votes of the municipal review boards. Their participation also helped to cool rhetoric in public fora. At the same time, however, many opponents viewed these same advocates as outsiders interfering in a neighborhood issue in which they had no stakes. This bred resentment among opponents, who felt as if they were being painted as bigots by the interfaith coalition. This additional conflictual dynamic increased tensions and added challenge to extra-hearing negotiations. Again, this points to the necessity for thoughtful launches of faith-based advocacy in mosque development proposals.

### *Political Experience of the Muslim Community*

A Muslim community’s political acuity was demonstrated to be a double-edged sword in the case studies. Standing relationships with local politicians led Muslim leaders to call upon them, but outcomes were positive and negative. In Savannah, the relationships that the co-presidents had with the mayor, councilmen and local party leaders led to political support for the Muslim community in the aftermath of its facility’s fire bombing. That support, in turn, provided cover for the public to also stand with the Muslim community. In Scottsdale, relationships between Muslim community representatives and the mayor led to her to advise them on their community outreach and conflict management efforts. However, when the mosque president in Voorhees reached out to the township mayor and Democratic Party leaders, he was perceived by

opponents as “tipping the scales” of local government in his favor. The research shows that when Muslim communities seek the support and guidance of local officials, they must spend this political capital prudently so that it reduces rather than inflames conflict.

**RQB**      ***What factors mitigate conflict around mosque developments in America’s suburbs?***

Five variables emerged as leading mitigating factors in conflict around mosque proposals: selection of a mixed-use neighborhood for development; planning officials’ facility with religious land use proposals; the development experience and savvy of the Muslim community; advance communications among the faith community, planning officials and the surrounding community; and a spirit of compromise among development stakeholders.

*Neighborhood Type: Mixed Use*

The more diverse an area is in terms of the uses it contains, the more likely that property owners and residents will be open to a new or expanding house of worship, including a mosque, and the less likely that conflict will occur in the review process. As was demonstrated in Savannah, a mixed use neighborhood that already includes commercial properties, multi-family homes and, importantly, other houses of worship, is less likely to feel imposed upon by a new religious facility—variety and coexistence are already part of its daily rhythm.

*Experience of Planning Officials with Religious Property Developments*

The Savannah and Scottsdale cases make clear that planning officials who have experience dealing regularly with religious land uses are better prepared to manage conflictual mosque developments. Having stewarded a variety of religious property applications, they are able to discern common opposition issues, as well as proven conflict management tools. This also

fosters an ability for planners and other municipal officials to more readily take conflict in stride and focus on the end goals of regulation compliance, impact mitigation, and protection of civil and development rights. Simply put, experienced professionals are more able to keep perspective on conflictual religious land use applications and not allow the conflict to subsume sound process.

### *Development Experience of the Muslim Community*

The leaders of the Scottsdale Muslim community had the most prior development experience—with their own residential projects and, for the President, with another mosque—and the value of that history was clear in the research. They were at a distinct advantage from the outside of their project, understanding the value of clear communications, outreach, engaging experienced professional consultants, and navigating the application and public hearing process. Although this knowledge base did not eliminate conflict in their approvals process, it did reduce it as compared to the Voorhees case. Lack of experience on the part of that community meant that missteps prolonged the timeline for the project and heightened conflict around the case.

### *Advanced Communications*

In both Scottsdale and Savannah, contacts made by the Muslim communities with planning officials and neighbors before submitting their applications reduced conflict and streamlined the approvals processes. Addressing issues likely to produce conflict prior to presenting the plans in public hearings meant that the proposals already were palatable to a degree. Also, advance project modifications reduced the amount of criticism and change requested in the public phase of the process. In turn, it was harder for Scottsdale's opponents to argue that the project was incompatible with codes and ordinances. In Savannah, it is notable that a facility once firebombed received no opposition to its redevelopment. I argue that this acceptance is a direct result of the advance neighborhood outreach made by the consulting planner.

### *Spirit of Compromise*

When stakeholders were willing to compromise on their positions, conflict in the case studies was mitigated. As parties worked to meet each other's needs, a sense of cooperation, trust and neighborliness was established. And, while no party had all of its needs or desires met, everyone got something they were hoping for. A spirit of compromise in the public review process not only helped secure approvals for the subject mosque proposals, it laid the foundation for more positive community relations into the future.

### **RQC      *What role does public policy play in the reduction of tensions around mosque developments in America's suburbs?***

At the time of the case study mosque developments, the requirements of RLUIPA had not yet clearly been defined by case law and compliance not consistent across municipalities. Certainly, the ordinances of the subject municipalities had not yet been re-written to incorporate RLUIPA's mandates. Still, the case studies provide an early illustration of the potential positive impact of RLUIPA on conflict. As previously mentioned, the value of its goal for code, ordinance and process neutrality among religious and secular assemblies is best seen at particular process points. For the most part, however, depending on the skill and experience of planning officials and legal teams involved in the cases, RLUIPA was a blunt tool, used more as a threat to drive approvals than as an aid to process clarification and conflict mitigation.

In the decade since the case study developments were proposed, legal challenges to RLUIPA, made by both municipalities and faith communities, have better defined its boundaries, as well as and its usefulness as a tool for conflict resolution. In my observation of subsequent mosque

development controversies,<sup>565</sup> the requirements of RLUIPA have increasingly acted as neutralizing agents in tense and emotionally charged hearing environments. In particular, RLUIPA requires that a review board's decisions be made without bias and based on the objective facts of the case. Deliberations must be grounded in substantiated evidence and rational planning considerations. To allow a public hearing to run amok, therefore, risks a RLUIPA challenge and municipal responsibility for its own and the faith community's legal fees.<sup>566</sup> Increasingly, therefore, RLUIPA drives municipal officials to maintain focus on issues within the board's purview and to steer public comment away from more contentious issues related to creed, geopolitical events and terrorism. Minimizing dramatic rhetoric seems to help reduce conflict.

From a wide-lens policy perspective, RLUIPA continues to emerge as a tool to drive cultural diversity and teach tolerance. In this regard, RLUIPA might best be compared to the 1968 Fair Housing Act.<sup>567</sup> That is, just as the FHA has ensured equal access for minorities and other groups who might be excluded from living in particular neighborhoods, RLUIPA is ensuring that mosques and other houses of worship likewise will have a place in American cities, suburbs and rural towns. The lesson from both FHA and RLUIPA is that in cases of intractable bias against minorities, the federal government does have a role in requiring local communities to reject exclusion and accept difference. Sometimes forcing enlightenment is the only way it arrives. The value of diversity may not be immediately apparent to the municipality—in fact the change may be bitterly resented—but over time the richness of diversity is revealed in stronger, more

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<sup>565</sup> The Temecula, California mosque development case is a strong example of successful conflict management on the part of municipal officials, as well as leaning on the requirements of RLUIPA to control public hearings. See: "Temecula Approves Mosque After Contentious 8-Hour Hearing," *LA Times*. Published online 1/26/2011. Accessed 12/13/2011 via <http://latimesblogs.latimes.com/lanow/2011/01/temecula-approves-mosque-after-contentious-8-hour-hearing.html>

<sup>566</sup> Alan C. Weinstein. "Recent Developments Concerning RLUIPA," *Current Trends and Practical Strategies in Land Use Law and Zoning*, Patricia E. Salkin, ed. Chapter 1, page 3.

<sup>567</sup> Fair Housing Act, 42 U.S.C. 3601, et seq.

vibrant communities. Further, such federal intervention ensures that we are all held to our higher national ideal of equal access for all.

**RQD**      ***What role do public planners and municipal officials play in the reduction of tensions around mosque developments in America's suburbs?***

It is clear from the case studies that knowledgeable, well-trained and experienced public planners and municipal officials contribute to reducing conflict. As was seen especially in Scottsdale, they are better able to anticipate conflictual aspects of applications, recommend modifications and approaches to mitigate that conflict, and are more skilled at managing multiple stakeholders with varying demands. Most importantly, they are able to recognize patterns of behavior and opposition strategies that are typical of contested land use reviews of any variety. The range of their experiences and long-range perspective helps them to contextualize the emotion of mosque-specific conflicts and respond to it with professional detachment. Further, those with solid understandings of the legal requirements for religious land use proposals, both under local ordinances and under RLUIPA, are better able to guide public hearings in ways that limit focus on extra-jurisdictional issues and protect the development and civil rights of both applicants and opponents; I observed that legal compliance, particularly under RLUIPA, is itself a strong determinant in conflict reduction.

None of the above findings is particularly surprising or revelatory for our understanding of planners' roles in mosque controversies. I argue that the more interesting finding is the parallel conflict management structure I observed operating alongside the formal municipal planning establishment. In the case studies, when planners and municipal officials were under political pressure to appease opponents, were unprepared for the intensity and divisiveness of the

controversy, or were procedurally unable to manage it, Muslim communities acted as transformative agents in the local controversies.

Muslim representatives, their allied advocates and, in the case of Savannah, a consulting professional, reached out to the parties who most vigorously rejected the mosque plans and tried to compromise and resolve disputes. Through direct contact, education and negotiation, they found workable solutions to problems. And, at the same time, they forged a process of community building, helping to define a collective identity and vision for their neighborhoods and municipalities, encouraging understanding and promoting tolerance. This is not to suggest that the host communities were transformed overnight into utopias of multiculturalism. But in all three cases, as a result of the faith community's efforts and those of its advocates, acrimony decreased over time and the mosques were well integrated into their neighborhoods. Such opinion shifts could not have been mandated in the public planning process, nor could they have been driven by municipal officials or public planners alone. They were accomplished by the necessary outreach, empathy, and response of the faith communities and their advocates.

**RQE      *How does conflict and negotiation in public review processes influence the design choices Muslim American communities make for their houses of worship and community centers?***

Conflict and negotiation in public review processes did influence design choices made by the case study faith communities. In Voorhees and Scottsdale, public reaction resulted in the homogenization of Islamic forms—minimizing their distinction and recognizability so that the mosques would, in the eyes of opponents, blend more readily with the surrounding residential neighborhoods. But the faith communities' choices to modify their designs seems to have had less to do with purposefully ensuring that their buildings not look "Islamic" and more to do with



choosing the path of least resistance. That is, the faith communities seemed to have assumed a stance that they would “go along to get along,” making the changes that would appease neighbors and officials and draw the review to conclusion.

Two other factors were also powerful contributors to design modifications in the case studies: internal disagreement on the desirability of traditional versus innovative design choices, financial limitations, and the tenacity of the Muslim community. Even before the reactions of the public and review board officials impact a design, the varied opinions of the congregation shape its self-identity and vision for representative architecture. Choosing traditional forms drawn from members’ personal experience of mosques over innovative modern designs, or over some hybrid of traditional forms fused with locally-inspired characteristics<sup>568</sup> can be a difficult process that challenges the harmony and resolve of the membership. Often, the design concepts already are shaped by a good deal of internal compromise long before the public process initiated.

It goes without saying that for volunteer-based, non-profit faith communities, finances influence design outcomes. Limited resources scale the depth and duration of an architect’s engagement in the project, as well as the choices that can be made for the complexity and quality of a facility’s form and material palette. Finances also may limit the caliber of design professionals that the faith community is able to engage. Finally, the political acuity and social standing of a faith community’s leaders also influence the degree to which they are willing to pursue controversial design choices. Those less willing to challenge opponents—either because they

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<sup>568</sup> See in particular the typological analysis of American mosques forwarded by Omar Khalidi in his article “Approaches to Mosque Design in America,” in. *Muslims on the Americanization Path*, Haddad and Esposito, editors. Atlanta, Ga.: Scholars Press, 1998. Pages 317-334.

lack tolerance for conflict or because they feel that they do not hold sufficient local political capital to garner supporters—are less likely to propose potentially controversial designs.

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## CONCLUSION

The synthetic analysis contained in this chapter demonstrates that the data collected in the case studies support my dissertation's hypotheses and answer its overarching research questions.

The work's value, however, lies not in a successful academic exercise, but in the application of the amassed knowledge. My findings have implications for faith communities proposing mosque developments and for the municipalities that will steward and adjudicate them. To serve those audiences, the next two chapters distill the research findings into practical recommendations for managing and reducing conflict in suburban mosque developments. Then, the final chapter takes a broad view, identifying the study's significance to planning, immigrant assimilation and architectural theories, as well as its likely influence on public policy and planning education.

## CHAPTER VIII

### IMPLICATIONS FOR MUNICIPAL OFFICIALS

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#### INTRODUCTION

Since September 11<sup>th</sup>, 2001, and especially in the wake of the 2010 Park 51 development controversy, protest and politics surrounding mosque developments across the country have had an impact at the local level. A national, grassroots organizing effort to resist mosque construction has percolated to municipalities, placing pressure on the local elected officials, municipal attorneys, planners and appointed review board members who are managing the development proposals of Muslim American communities. Although the broad questions of security and national identity at issue in the national debate over mosques are beyond the purview of local officials, planning officials must still contend with their significant impacts. This chapter, therefore, is intended as a best practices guide for municipal authorities as they steward and adjudicate development applications for mosques and related accessory uses, and at the same time, protect the development rights of applicants as well as the free speech rights of opponents.

The recommendations this chapter<sup>569</sup> contains are drawn from my literature review, the case studies presented in previous chapters, and the synthetic analysis of the case studies' outcomes. I begin by offering guidance, in light of the mandates of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), for municipalities to ensure code and process readiness for religious land use proposals in general. Then, I provide recommendations for training planning staff and review board members to lawfully adjudicate proposals for houses

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<sup>569</sup> An version of this chapter appeared as part of a previously published report. See: Kathleen E. Foley. *"Not in Our Neighborhood": Managing Opposition to Mosque Construction*. Washington, DC: The Institute for Social Policy and Understanding, 2010.

of worship. Then, as the chapter transitions to recommendations that pertain specifically to mosque development, introductory information on Islamic practice, typical design elements of mosques, and common facility uses is offered. This basic knowledge should help ease communications between municipal officials and Muslim communities and facilitate clarity in public hearings.

Next, proactive conflict management strategies for mosque proposals are offered, including advance project review and pre-hearing impact mitigation strategies. Careful attention is paid to the management of public hearings, and particularly public comment. Tools are provided for review board members to maintain focus on matters of purview. Clear instruction is offered on establishing a sound public record that demonstrates the municipality's fair and unbiased deliberations. Finally, recommendations are made for ensuring constitutional and regulatory compliance in review board decisions regarding religious land uses.

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## **PART I: ADVANCE PREPARATION FOR ANY TYPE OF RELIGIOUS LAND USE PROPOSAL**

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As discussed in the literature review for this dissertation (Chapter I), the key legislation that guides the adjudication of religious land uses is the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). In the early years of RLUIPA's implementation, the planning establishment felt that RLUIPA severely limited its ability to regulate religious land uses and balance the development rights of religious entities with the rights and needs of surrounding property owners. However, outcomes in RLUIPA-related lawsuits increasingly support the idea that local governments actually do retain a significant amount of regulatory authority if the bases for decisions are supported by rational planning principles and neutral

zoning codes.<sup>570</sup> Legal scholars and practicing attorneys have begun to outline best municipal practices for addressing religious land use proposals generally. This section presents a number of these valuable, practical recommendations.<sup>571</sup> Then, later sections elaborate on that general advice with recommendations specific to mosque proposals.

It is important that municipal officials remember that the primary goal of RLUIPA is to ensure religious land uses equal and fair treatment, not *privileged* treatment. It is incumbent upon local governments, therefore, to ensure that deliberations surrounding religious land use applications are conducted on a rational, equitable basis and that they are anchored in accepted planning principles.

### **Plan Comprehensively; Zone Neutrally**

As with land use generally, all good planning for the treatment of religious properties starts broadly and is considered comprehensively. Ideally, comprehensive plans provide reasonable and feasible locational options for religious developments, including accessory uses, now and into the future. Such planning offers flexibility to the municipality and religious institutions. For example, if after weighing a proposal's impacts, a municipality feels that the development is untenable on the applicant's first choice parcel, a denial will be problematic if alternative locations were not planned proactively. If the denial will leave the religious community with no

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<sup>570</sup> See:

Alan C. Weinstein. "Recent Developments in Concerning RLUIPA," *Current Trends and Practical Strategies in Land Use Law and Zoning*, Patricia E. Salkin, ed. Chicago: ABA Publishing 2004. Page 11.

Adam Kingsley and Thomas Smith. "The Zoning of Religious Institutions in the Wake of RLUIPA—A Guide for Planners," *Zoning Practice*. Washington, DC: American Planning Association, September 2008. Page 3.

<sup>571</sup> Municipal officials are encouraged to review the cited sources for a more extensive discussion of considerations. Recommendations in this section are drawn from Michael S. Giaimo & Lora A. Lucero, eds. *RLUIPA Reader: Religious Land Uses, Zoning and the Courts*. Chicago: ABA Publishing, 2009. See especially: Chapter 7, "How Local Government Can Nip RLUIPA Claims in the Bud," Dwight H. Merriam, FAICP. Chapter 8, "RLUIPA Challenges: An Ounce of Prevention is Worth a Pound of Cure," Alan Weinstein. Chapter 9: "RLUIPA and Planners: The Importance of Fairness in Planning for and Regulating Religious Land Uses," Graham S. Billingsley, AICP. Chapter 10: "The Top Ten Tips," Daniel P. Dalton, Vivian Kahn, FAICP and Bryan W. Wenter, AICP. Other important resources are Kingsley & Smith, *op. cit.* and Weinstein, 2004, *op. cit.*

viable development options, the courts will likely consider the decision a substantial burden on free practice. However, when reasonable and feasible development alternatives exist for faith groups in multiple municipal zones, the courts are less likely to find a substantial burden.<sup>572</sup>

Planners and municipal attorneys should carefully examine their comprehensive plans to ensure accommodation of religious properties and update those plans as needed. Obviously, such foresight will be more easily achieved in newer municipalities with available land than in older areas that are more completely built out.<sup>573</sup>

Next, planners and municipal attorneys should review zoning codes to determine if they contain differences in the treatment of religious assemblies and secular assemblies. If secular assemblies such as theatres are allowed as of right in commercial districts while religious institutions are required to secure a use variance or conditional approval, the treatments of the two could be interpreted as unequal.<sup>574</sup> The courts have recognized the validity of creating a generic “assembly” category for zoning purposes and placing religious and secular assemblies under the same broad restrictions.<sup>575</sup> Municipalities should consider identifying zones in which assemblies—as a general category—will be allowed as of right, as well as those in which they are not permissible. Additionally, eliminating the traditional categories of “church,” “house of worship,” or “religious institution” not only equalizes treatment for religious and nonreligious uses, it equalizes treatment of different religious groups; codes no longer need to call out “church, synagogue, mosque or other.”

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<sup>572</sup> Kingsley and Smith, *op. cit.*, page 7.

<sup>573</sup> Weinstein, 2004 *op. cit.*, page 12.

<sup>574</sup> Merriam, *op. cit.* page 117.

<sup>575</sup> *Vision Church, United Methodist v. Village of Long Grove*, 468 F3d 975 (7<sup>th</sup> Cir. 2006).

One successful method for dealing with assemblies neutrally is to base their zoning on size, as calculated, for example, by square footage, floor area ratio, and number of parking spaces.<sup>576</sup> Smaller assemblies might be more appropriate to residential zones and larger assemblies for commercial or other nonresidential areas. The assembly's size might be linked to roadway classification, such as arterial, collector, and local access, to ensure that its traffic load can be adequately carried near the site. Landscaping and buffering requirements might increase with assembly size, particularly in residential zones.<sup>577</sup> This type of approach affords municipalities flexibility to deal—neutrally—with assembly variations ranging from thirty member congregations with one Sunday service to sprawling mega churches with daily offerings of educational and social programs. It also increases a municipality's ability to fairly protect residential neighborhoods from assembly uses, which may be out of scale or otherwise incompatible with surrounding homes.<sup>578</sup>

### **Preparing Planning Staff and Review Board Members**

Municipal officials, planners and appointed review board members should be trained in the basics of RLUIPA's scope and requirements. The municipality should provide "sensitivity training" so that staff and board members are aware of comments or actions that may be perceived as hostility and bias. Board members must bear in mind that their comments and queries will be a critical element of the public record, and should never communicate any sense of prejudice or aggression.<sup>579</sup> Anger management and conflict resolution should also be part of staff and board training.<sup>580</sup> As with any controversial land use proposal, review processes for

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<sup>576</sup> Strong examples of well-considered and carefully written zoning codes for assemblies are those of the Village of Long Grove, Illinois ([http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=](http://www.sterlingcodifiers.com/codebook/index.php?book_id=)) and the City of Charlotte, North Carolina. (<http://www.charmeck.org/Planning/ZoningOrdinance/ZoningOrdCityChapter12.pdf>)

<sup>577</sup> Kingsley and Smith, *op. cit.*, page 5.

<sup>578</sup> An excellent discussion of RLUIPA's impact on residential neighborhoods is found in chapter 4 of the *RLUIPA Reader*, Marci A. Hamilton's "The Unintended Consequences RLUIPA Has Visited on Residential Neighborhoods." Giaino & Lucero, *op. cit.*

<sup>579</sup> Kingsley and Smith, *op. cit.*, page 7

<sup>580</sup> Merriam, *op. cit.*, page 122.

religious properties can be fraught. One's religion is personal and cherished, and perceived attacks on it by any party can draw emotional responses. The same is true for private property ownership; for most Americans their home or business property is their most valuable asset, and they feel bound to protect it and their financial futures. The coming together of these two strong motivating factors will place review board members in the position of adjudicating applications under high stress, and they should be prepared to control escalating emotions, including their own. It is critically important that they can do so calmly and respectfully.

### *Dealing with Public Pressure*

Review board members, and particularly the board chairs, must be prepared to deal with pressure from members of the public who have concerns about a mosque proposal. Appointed review board members occupy a challenging position, particularly in smaller towns, because applicants, opponents, and supporters may be people they know. Members of the public often do not hesitate to approach a review board member to lobby their position on an application, much as they would an elected official such as a mayor, city council member, or town supervisor. But elected officials and appointed review board members cannot be vulnerable to the same public pressures.

Elected officials are accountable to their electorate. Review board members are quasi-judicial officials who are accountable to the regulations they administer. Their decisions are legally binding. They must review proposals in public session and assess them on their merits using established criteria. To protect board members from extra-session pressures and to ensure that other parties do not have undue or illegal influence on an application, members should be instructed by the municipal attorney not to discuss the application with any member of the public. This advice extends to inter-board conversations, as well. Land use applicants have a right to witness deliberations on their proposals in open session, and those deliberations should



not be predetermined by extra-session conversations among adjudicators. In short, board members should not discuss land use applications with anyone outside of advertised public meetings and legal executive sessions.

### *Managing Contentious Public Hearings*

Board members and particularly board chairs should additionally be trained in the management of public hearings to help ensure a civil and controlled proceeding. Following parliamentary procedure like *Robert's Rules of Order* establishes a structure for sessions that can be relied upon to respectfully manage application presentation, board debate, and public comment.<sup>581</sup> Additionally, many states have open meetings laws that mandate the process and order for public hearings.<sup>582</sup> A review board chair can lean on an established procedure as a neutralizing agent, especially in a tense and emotionally-charged hearing environment.

Dwight Merriam and others recommend that planners' and board members' RLUIPA knowledge and hearing management skills be tested in a mock review for a hypothetical application, complete with angry opposition.<sup>583</sup> Such role-play will emphasize the need for review board members to speak and deliberate without bias, and to tie their questions and statements back to the objective facts of the case. The municipal attorney should emphasize that any comments made by the planning staff stewarding the application or the board members adjudicating it will potentially become part of the case record and should, therefore, always be based on substantiated evidence and objective, rational considerations.

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<sup>581</sup> <http://rulesonline.com/>

<sup>582</sup> The guide to New York State's Open Meetings Law ("Conducting Public Meetings and Public Hearings") offers one example: <http://www.dos.state.ny.us/lgss/pdfs/public.pdf> (accessed 10/3/2010).

<sup>583</sup> Merriam, *op. cit.*, page 122.

In a number of significant ways, the design of mosques is different than the more familiar forms of churches and synagogues. To help municipal officials understand drawings and communicate clearly with Muslim community representatives, the character defining features of mosques and typical use patterns for the facilities are briefly described in this section.

### **The Architecture of Mosques**

#### *Orientation to Mecca*

Muslims pray facing Mecca, the location of the faith's holiest site. The direction of Mecca is indicated to worshippers by the *mihrab* (pronounced with a short i as in mint: mih-rob), a niche in the center of the primary wall known as the *qibla* (pronounced kib-bla). Muslims often orient the entire building which houses the prayer hall toward Mecca, resulting in a structure that is situated off-axis with the street grid. In some cases, such as in an historic district, a proposed structure that does not meet the line of the existing streetscape may be considered incompatible from a design perspective. In dense urban areas where surrounding structures make off-axis orientation difficult, Mecca orientation often is accommodated on the inside of the building. In those cases, the *qibla* wall may be constructed at a different angle than the exterior walls and will be reflected as such on architectural drawings.

#### *Interior Layout of a Mosque*

The prayer hall within a mosque is generally a large open room with no seating and little other furniture. Muslims do not gather in pews to pray, but instead stand in rows to perform a ritual of prayer that includes sitting, kneeling, and prostrating with foreheads to the floor. Calculating occupancy for a mosque, therefore, is not the same as calculating occupancy for a church or synagogue. In those houses of worship, occupancy is usually determined by the number of

seats in pews. In a mosque, it is best to use standard calculations for assembly spaces without seating, such as that recommended by the International Building Code<sup>584</sup> This or a similar neutral formula should be included in a municipality's zoning code as a standard occupancy calculation for all assembly spaces without fixed seating. Parking calculations should then be based on that occupancy number.<sup>585</sup>

Conversations about occupancy may be complicated by terminology. Religious organizations commonly use the term membership to describe their congregations. Muslims, on the other hand, do not generally consider themselves “members” of a mosque in the way that Christians consider themselves members of a church or Jews consider themselves members of a synagogue. In Muslim-majority societies, where mosques are common and conveniently situated, an individual may attend several different congregational mosques without considering himself or herself a “member” of any of them. Even though in the United States, where mosques are few and far between, and Muslims tend to affiliate more strongly with a single mosque, they still may not refer to themselves as “members.” Sometimes this difference causes confusion in conversations between mosque representatives and planning officials as they try to determine building occupancy and the related parking calculation. Rather than focusing the discussion on membership, a better approach is to consider the number of people who regularly attend the Friday congregational prayers, since they generate the highest regular attendance.

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<sup>584</sup> The 2009 International Building Code prescribes a floor area of five net square feet per occupant in assemblies without fixed seats. See Table 1004.1.1, “Maximum Floor Area Allowances per Occupant.” Country Club Hills, Illinois: International Code Council, Inc., 2009. Page 220.

<sup>585</sup> In the Voorhees case study, a tremendous amount of conflict surrounded the calculation of building occupancy and related parking needs. At the time, the Voorhees code required that religious land use applicants provide one parking space per three seats. The zoning review board was flummoxed over how to calculate parking without seats. In fairness to the Voorhees ZBA, the occupancy of the mosque was something of a moving target throughout the multiple hearings, since the mosque leadership provided ambiguous numbers about congregation size. Still, this conflict was avoided entirely in Savannah and Scottsdale by the use of the previously mentioned International Building Code guideline for calculating occupancy in an assembly space without fixed seating.

### *Gender Segregation*

Most but not all Muslim American communities practice varying degrees of gender-segregation for purposes of modesty and avoiding unnecessary distraction during prayer. The prayer hall may have separate entrances for men and women, as well separate spaces for prayer itself. Sometimes a single prayer hall is separated with some sort of fixed or movable divider, and sometimes there is a different room in which women and children pray. Mosque plans will also include gender-segregated spaces for ablution (ritual washing of face, hands, and feet before prayer, known as *wudu*—pronounced woo-doo), normally near toilets and sinks to optimize water supply systems.

### *Dome and Minaret*

Domes and minarets are important visual symbols of Islam and character-defining features of a mosque. They communicate the building's function to Muslims and non-Muslims alike. The minaret can be thought of as a bell tower. Just as Christian churches commonly ring bells from towers to call parishioners to services, in areas of the world where Muslims are in the majority, either a cantor makes the call to prayer or a recording of one is broadcast from the top of a minaret to indicate that the time for prayer has arrived. However, in areas where Muslims are a minority (including the United States) the call to prayer is rarely made audibly on the exterior of a mosque. The reason is simple—usually most of the people around the mosque are non-Muslims and do not need to hear the call. In the US the call to prayer is more commonly made inside the mosque and on personal devices such as clocks, watches and cell phones. Still, minarets are usually included in the design of new mosques as a symbol of religious identity.

### **Common Use Components of Mosques**

Mosque proposals frequently include multiple accessory uses in addition to the actual prayer hall most people envision when they hear the term “mosque.” In the United States and other

parts of the world where Muslims are minorities, prayer halls are normally accompanied by a number of spaces that serve the broader social and educational needs of the faith community. Municipalities commonly review such functional elements as social halls with banquet facilities, meetings rooms, living quarters for an imam (Islamic clergyman) and his family, classroom space for religious instruction, K-12 schools, and funerary facilities used in the ritual preparation of bodies for burial. Specific aspects of mosque use that may be controversial in a land use review are addressed in this section.

### *Prayer Times*

Muslims pray five times a day: at dawn, at noon, at mid-afternoon, at sunset, and in the evening.<sup>586</sup> Prayer times follow the sun, and as such shift slightly during the year; that is, in the northern hemisphere the sunset prayer takes place quite early in winter and quite late in summer. Islam does not require that these prayers are made in a mosque, only that they be performed in a clean place without distraction. And, given the frequency of prayers and the small number of mosques in the United States, it is in fact quite difficult for most Muslim Americans to get to a mosque during the day. As a result, most make the daily prayers at home, at work, or at school. The Islamic equivalent of the sabbath, when congregational prayer is required, is Friday at midday and is called the *jum'ah* (pronounced joom-ah) prayer. In terms of traffic patterns for particular mosque proposals, then, municipal officials and neighboring property owners can expect that few people will attend the mosque during the day and a small number will attend it during the evening prayer, after members' workdays have ended. Friday mid-day will be the time of peak attendance for the mosque.

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<sup>586</sup> The Arabic names for the prayer times are *fajr* (dawn), *duhr* (noon), *'asr* (mid-afternoon), *maghrib* (sunset), and *'isha* (evening).

### *High Holy Days*

Islam has two high holy days: *Eid al-Adha* and *Eid al-Fitr*; the latter marks the end of the month of Ramadan, the lunar month during which Muslims fast from sunrise to sunset. The dates for these events shift slightly year to year as the lunar and Gregorian calendars are not in sync.<sup>587</sup>

Mosques host special prayers and social events for these holidays, and the municipality can expect the facility to have high traffic and occupancy during them.<sup>588</sup> Additionally, some Muslims attend the mosque more frequently in the evening during the holy month of Ramadan, particularly through its last ten days. The lunar month of Muharram is also a period of higher mosque attendance for Shi'ite Muslim communities.

### *Traffic & Parking*

Traffic and parking tend to be contentious issues in most development proposals, and particularly religious land use proposals; mosques are no different. Conflicts tend to be particularly intense in residential neighborhoods. The best response is for the municipality and the Muslim community to have carefully considered traffic and parking impacts as well as potential mitigating measures.

Municipal officials should reinforce the need for mosque representatives to provide data-based calculations for occupancy, parking needs and traffic impacts. Mosque representatives should be encouraged to commission a reputable, independent traffic engineer to conduct an analysis of the expected impacts worshippers' cars will have on the surrounding neighborhood. It may be additionally useful for mosque officials to prepare an overflow parking plan for high occupancy events. One successful strategy planners might recommend to Muslim communities is

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<sup>587</sup> The Islamic calendar is lunar and shifts ten days earlier in each Gregorian calendar year. As such, Ramadan and the Eids take place earlier in each Gregorian year.

<sup>588</sup> From a planning perspective, one can think of the Eids like Christmas and Easter or Rosh Hashanah and Yom Kippur. That is, mosque members who might not attend congregational prayers regularly are more likely to come to the mosque for the celebration of the high holidays.

approaching the owners of nearby, underutilized parking lots and establishing periodic rental agreements. Not only will such agreements keep cars off surrounding streets, Muslim communities can also avoid investing money in constructing their own lots, which will themselves be underutilized. Additionally, the municipality can avoid having to approve another undesirable swath of impervious surface.

### *The Call to Prayer*

Perhaps the least understood and most controversial element of review processes for mosque proposals is the call to prayer, or the *adhan* (pronounced ahd-haan).<sup>589</sup> Planners and attorneys should ascertain whether the Muslim community intends to pursue the broadcast of the call to prayer; if it does, the conflict in the land use review will likely be considerably higher. Particularly in residential zones, non-Muslims often consider a broadcast call to prayer a nuisance and a form of noise pollution. And, when uninformed about the meaning and intent of the call, some opponents can interpret it as proselytizing or an attempt to “dominate” and “intimidate” a neighborhood.<sup>590</sup>

If a Muslim community does desire to broadcast the call to prayer, legal precedent supports it being made at decibel levels equivalent to those of ringing church bells.<sup>591</sup> In an effort to

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<sup>589</sup> The phrases of the *adhan* are translated as follows:

(1) God is most great (four times); (2) I testify that there is no god but God (twice); (3) I testify that Muhammad is the Messenger of God (twice); (4) Hurry to prayer (twice); (5) Hurry to success [sometimes translated as ‘salvation’] (twice); (6) only before the morning prayer: Prayer is better than sleep (twice); (7) God is most great (twice); (8) There is no god but God.

Translated by Frederick Mathewson Denny in his book *An Introduction to Islam* (second edition), which is an excellent resource for non-Muslims on the history and practice of Islam. Upper Saddle River, NJ: Macmillan Publishing Company/Prentice Hall, Inc., 1994. Page 120.

<sup>590</sup> This was the case in Voorhees, despite the fact that the mosque’s design had no minaret and the president repeatedly stated the community’s intention not to make an audible call to prayer. A cupola on the building’s roof, merely a design element to allow additional light into the prayer hall, was wrongly interpreted by opponents to be a minaret. Several speakers insisted that even if the Muslim community did not make the call to prayer immediately, they could not be trusted not to in the future. It is unclear how opponents thought the call would be made from the cupola—it is open to the floor below, it has no means of access for a cantor, it is not wired for speakers, and it has fixed windows.

<sup>591</sup> Kathleen M. Moore. *Al Mughtaribun: American Law and the Transformation of Muslim Life in the United States*. Albany, New York: The State University of New York Press, 1995. Page 132.

prophylactically reduce conflict related to broadcasting the call to prayer, municipal officials might encourage the Muslim community to consider compromises such as only making the call to prayer before the Friday congregational prayer and on high holy days. Certainly, an extra degree of public education and outreach will be required around the issue.

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### **PART III: STEWARDING A MOSQUE DEVELOPMENT PROPOSAL**

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Mosque applicants should not be asked to meet lower or higher standards in their approval process than are any other kind of assembly. As planner Graham S. Billingsley writes, the key to avoiding a RLUIPA challenge is for municipalities to “be fair, be very fair.”<sup>592</sup> When a mosque proposal is received, planners and attorneys should review the records of recent secular assembly applications and religious assembly applications to determine the rigor and requirements of their review. Planners should determine what permits were necessary for the application’s approval, as well as what documentation the applicants were asked to provide to support designs, plans and proposed uses. The findings of fact and conditions of approval or denial also should be read critically. That is to say, after making allowances for site and project-specific variations, the review process followed and conditions established for the mosque review should be similar to those recorded for other assembly proposals. The record of these applications should be explained to review board members to inform their deliberations.

If the municipality does not have a policy of holding pre-hearing meetings with land use applicants, one should be established. Municipal officials should not hold advance meetings only with mosque representatives, as this could be considered unequal treatment. All land use

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In a famously controversial 2004 decision, the Hamtramck, Michigan city council modified its noise ordinance to accommodate the call to prayer at the same decibel level as church bells. See: <http://www.amren.com/news/news04/04/27/hamtramckmosque.html> (accessed 10/3/2010).

<sup>592</sup> Billingsley, *op. cit.*, page 143.



applicants should have access to the same municipal services. If the mosque application is the first to benefit from an advance hearing, the practice should be adopted as policy. The municipal attorney should be present for advance meetings with the applicant, as should the chair(s) of the review board(s) that will adjudicate the application. The attorney's role should be to explain the scope and requirements of RLUIPA for the benefit of the applicant and to ensure from the start that the treatment of the mosque proposal is fair and neutral. Finally, planning staff should document the advance meeting with the Muslim community in a letter or memo that details attendees, topics discussed, outcomes, and action items. The paragraphs that follow outline the kinds of topics that should be addressed in advance sessions.

### **Analyze Site Selection**

Municipal officials should discuss the goals of the Muslim community's development project, including the likely size of proposed structures and the primary and accessory uses to be included. If a site has not yet been selected, planners might review all zones in which religious assemblies are permissible and what is required for their approval in each (such as use variances and conditional use permits). Any available parcels appropriate for the project's scale and uses might be discussed. If a site has been selected, the parties should troubleshoot potential areas of conflict associated with it. These might include the development context for the location—the degree of build-out in the neighborhood, existing traffic issues, community reaction to recent large-scale development proposals and recent religious land use proposals, and the degree to which the community's property owners are organized.

### **Understand the Design**

Muslim community representatives may present concept drawings to planning staff. Planners, board chairs and the municipal attorney should review them and compare them to code requirements for height, setback, lot coverage, and whatever other design and site plan issues

can be anticipated preliminarily. They should encourage the Muslim community to contain its design within the envelope of standing codes. If, for example, variances are needed to accommodate the height or lot coverage of the structure, this may reinforce public perceptions that the mosque “does not belong” in the neighborhood, and will likely increase tensions.

### **Establish Process Clarity**

So that all parties understand what will be required in the mosque’s public review process, planners and the attorney should explain the likely stages of the process and what will be required in terms of documentation. They should provide a checklist of materials that must be submitted and reviewed before each public hearing.

If the state in which the application is being made allows preliminary and final site plan approvals in a single hearing, officials should discourage the Muslim community from taking that path. Even though this choice may be perfectly lawful, it does tend to give neighboring property owners the impression that an application is being pushed through the approvals process. A faith community may seek a unified preliminary and final site plan approval to save money. However, any hoped-for cost efficiencies are likely to be lost to an extended review period and increased tensions. There can be a psychological factor at play that gives an intimidating strength to the label “final” and causes the public to feel powerless to influence outcomes.<sup>593</sup> Staging contentious proposals into preliminary and final steps will give the public the rightful sense that careful attention is being paid by the municipality and assure them that they have had a real opportunity to shape the end product and its impact on their properties and quality of life.

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<sup>593</sup> This was clearly observed in the Voorhees case study.

## **Encourage Neighborhood Outreach**

Once likely areas of contention are identified and a plan established for addressing them, municipal officials should encourage Muslim applicants to undertake an outreach campaign to property owners and residents surrounding the development site. Planners should connect Muslim leaders to neighborhood associations or other known community organizers to discuss public education strategies and hold a community meeting regarding the proposal. Planners should attend the session as observers. The reaction they witness will help them gauge the degree of proposal resistance and identify contentious issues that are likely to be important in public hearings. However, as will be discussed later, members of the review board should not jeopardize their objectivity, or the perception of their objectivity, by attending such an event.<sup>594</sup>

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## **PART IV: ADJUDICATING A MOSQUE DEVELOPMENT PROPOSAL**

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Fair and equal management of a public hearing process begins with the legal notices sent to the surrounding neighborhood, published in local newspapers, and posted at the development site. The purpose of the development application should be identified by the neutral term “assembly,” or, at minimum, as “house of worship” or “religious facility.”<sup>595</sup> The former ensures notice equality with secular assemblies, while the latter ensures notice equality among religious land uses. Although this approach may not reduce conflict in the land use review—regardless, the public will know the proposal is a mosque at some point—it does from the earliest stages establish the municipality’s neutral treatment of the application. This is important both in terms of public perception and for documentation purposes in the case of a RLUIPA challenge.

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<sup>594</sup> In Scottsdale, developers of large-scale projects are required to meet with homeowners’ associations before proceeding to public hearing. The planners I interviewed reported a marked reduction in levels of hearing conflict since the requirement was implemented.

<sup>595</sup> This was the terminology used in the successful Savannah review process.

If a municipality normally holds public hearings during the day, officials should consider holding the sessions for mosque proposals in the evening when more citizens can attend. In all contentious applications, it is important that the public feel as if they have been afforded ample opportunity to participate in the process and influence outcomes. Also, if municipal officials sense that the public hearings for a mosque application will draw larger than normal crowds, they should relocate the meeting to a venue in which anyone who wants to participate can be in the room and able to see and hear proceedings. Public school auditoriums and theatres often provide good alternatives for meeting spaces.

### **Getting Off on the Right Foot**

If possible, the municipal attorney should attend all public hearings for religious land use proposals, and particularly for a mosque proposal. Smaller municipalities that retain a consulting attorney may find the cost of such extensive counsel beyond their means. However, the attorney's fees will likely be less than the enormous cost of defending the municipality against a RLUIPA claim. The attorney's role might include clarifying the legal requirements of the review process as part of introductory statements for each hearing, as well as the rights of the applicant and the municipality under RLUIPA. These statements will refresh the memories of review board members, educate the public in attendance, and, most importantly, document in the public record from the beginning of the process that the municipality understands the requirements of RLUIPA. Throughout the meeting, the attorney can advise the board on process and assist the chair in controlling public comment periods. If an attorney is not present, the board chair can fulfill these duties with support from planning staff.

### **Establish a Sound Public Record**

"Nothing is more important in successfully defending against a RLUIPA claim than a complete, comprehensive, and compelling record of rational decision making based on the pursuit of

legitimate government objectives.”<sup>596</sup> To accomplish such a record, planners, municipal attorneys and review board members should ensure that application management and hearing conduct encompass the consideration of all evidence related to the development proposal and a rational process of fact-finding, including rigorous professional analyses (for example, studies of traffic and parking impacts, as well as property value impacts). The record should additionally document that the municipality proceeded with flexibility and a strong spirit of compromise, offering reasonable alternatives to the applicant. Examples are providing concrete suggestions to improve a problematic site plan proposal, or an effort to recommend other development sites if the proposed site is simply inappropriate for the use.<sup>597</sup> Finally, rulings should be based only on the documented impacts of the proposed development and not on complaints or unfounded fears of neighbors or review board members.<sup>598</sup> Similarly, they should not be based on aspects of the religion to be practiced in the building. Details of religious creed and/or ritual should not be addressed in any land use hearing unless they have some bearing on a design element that must be reviewed for public safety or another compelling governmental interest.

### **Managing Public Comment**

The public comment portion of hearings likely will be the most contentious and challenging for review board members, and particularly the chair. Public comment is critical to democratic process in land use reviews and it must be as carefully protected as the rights of the applicant. But, it must be managed to ensure that its conduct is respectful and lawful. Here again the assistance of the municipal attorney can be invaluable.

Before public comment periods are opened, the attorney, board chair or planning staff should explain its contribution to the deliberation of the board. That is, public comment is an important

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<sup>596</sup> Merriam, *op. cit.*, page 122.

<sup>597</sup> Kingsley and Smith, *op. cit.*, page 7.

<sup>598</sup> *Ibid.*

venue to bring issues of concern to the board's attention, but it is only one factor that the board will consider. Public comment cannot lawfully outweigh factual evidence in the application.<sup>599</sup>

The official should then detail the ground rules for public comment. Speakers should be required to provide their name and address before presenting. Each individual should be given a two or three minute speaking period and slightly longer if representing a group (five minutes is typical).<sup>600</sup> Speakers should be held firmly to those time limits.<sup>601</sup> Most critically, officials should be crystal clear that speakers may only address issues over which the review board has purview, and that violators of this rule will be warned once, then asked to leave the session if they continue.

Just as creed and ritual should not be topics of board deliberation, neither should they be allowable topics in public comment periods. Certainly, comments that suggest that the proposed mosque or an individual affiliated with the mosque has links to terrorism have no place in a land use hearing. Legally, allowing such discussion would jeopardize a municipality's position in a RLUIPA challenge. Functionally, it only serves to escalate tensions around the application, and distracts from the legitimate land use concerns that should be raised in review board sessions. By extension, members of the public who have those legitimate land use concerns are denied the opportunity to have them thoughtfully considered and addressed. Finally, allowing fear and/or anger-based commentary to infuse land use reviews victimizes the Muslim American community and denies them the fair and unbiased proceeding which is their civil right. Municipal officials must have a plan for how they will address violators of these public comment ground rules. A police presence may either reduce tensions or increase them. Perhaps plain clothes officers could be on hand to remove individuals who will not comply after being warned and

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<sup>599</sup> *Westchester Day School v. Village of Mamaroneck*, 504F.3d 338 (2<sup>nd</sup> Cir. 2007).

<sup>600</sup> Some municipalities, like Scottsdale, allow individuals to cede their time to another individual so that he or she has an extended period of time. For example, an attorney representing a group of ten neighbors might be given all of their individual two minute slots for a total of twenty speaking minutes.

<sup>601</sup> So that board members are not distracted by monitoring time limits, some municipalities use timers that flash yellow when one minute remains and then red when the speaker's time is up.

asked to leave, or who have threatened either board members or members of the Muslim community. It is better to be prepared for a range of possibilities while hoping that none occur.

### **Factually Incorrect Statements Made by the Public and Review Board Members**

The entrance of factually incorrect statements into the public record is one of the greatest challenges of public comment in any land use review. When incorrect statements are allowed to stand in the record, they gain a degree of legitimacy. Often, uncorrected factual errors compound as other speakers refer to them in their own statements, and, much like the child's game of telephone, after multiple iterations the truth is unrecognizable.<sup>602</sup> It is critical therefore, that when a member of the public, the applicant, or a board member makes a factually inaccurate statement, the chair, municipal attorney or planning staff interrupt the session and correct what has been said. This is especially true when an inaccuracy has been perpetrated by a review board member. If the error is in the form of an intentional or unintentional statement of bias, the board member should admit to the prejudicial statement and apologize. This will "cleanse the record" from apparent institutional bias in the case of a RLUIPA challenge.<sup>603</sup>

### **Redirecting Fears and Suspensions About Muslims**

Simply banning biased statements and speculation about terrorism from land use review hearings does not make the issues go away, and it does not end their influence on the public process. Often, fear is simply cloaked in the language of land use concerns. Informed opponents understand that blatant hatred and fear cannot block a mosque from being developed, and so they may speak instead about traffic, lighting, noise, and other traditional land use concerns.<sup>604</sup> This tactic can be difficult to recognize initially, but it becomes more

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<sup>602</sup> This was a frequent problem in the Voorhees mosque review, when not even the municipal attorney corrected misstatements of fact.

<sup>603</sup> Merriam, *op. cit.*, page 121.

<sup>604</sup> A segment of the opposition to the Voorhees mosque organized around such purposeful obfuscation, delaying the Muslim applicants' approvals for more than a year.

apparent as the review process plays out. If the municipality and mosque leaders address legitimate land use problems, critics whose opposition is based on them should be assuaged. If parties keep returning to the table with new complaints, however, one can assume that they are driven by underlying exclusionary motivations.

Municipalities and Muslim communities may want to consider ways to enable productive discussions that are entirely separate from the public land use review process. One option may be for the Muslim American community to address these emotions themselves as part of its public outreach effort.<sup>605</sup> Another would be for a third party, such a different faith community or civic association, to host a discussion session.<sup>606</sup> However, it is important that the municipal officials and faith community leaders make clear that the meeting is merely an information session and will have no bearing on the land use review for the mosque proposal. Certainly, members of the review board should not attend the session and risk opening themselves to accusations that their deliberations were swayed by statements made there.

## **Decision Management**

When the public hearings have been closed and the review board has deliberated, a decision must be phrased and memorialized in a resolution. Requirements for resolutions will vary from state to state, so the recommendations offered here are general; municipal attorneys will be able to offer clearer guidance.

It is not uncommon for municipalities to consider board resolutions as so much housekeeping to be completed by staff at a later time and brought back to the board for final vote. However, in a

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<sup>605</sup> The chairs of the Voorhees zoning board of appeals and the Scottsdale Development Review Board reported that they felt it was important that the public have an opportunity to air its anger about the attacks of September 11<sup>th</sup>, 2001 and the wars in Iraq and Afghanistan, as well as fears about possible future attacks and the role some feared Muslim Americans might play in them. As such, they allowed extensive comment on those topics in public land use hearings.

<sup>606</sup> A neighboring Roman Catholic parish sponsored such an event in Scottsdale. Elected officials such as mayors, city council members, or town supervisors might also open a forum for mosque-related concerns.



contentious land use proposal, it is wise to craft resolutions in public session for the benefit of all parties to the application, as well as opponents and supporters. With an audience, the review board will need to pay careful attention to the thoroughness and accuracy of the resolution, and there can be no question that there was any post-hearing influence on its final form by any party. This kind of clear thinking can be a tall order after an extended, contentious public session. To ease the process, staff might provide a resolution template with suggested, broad language for findings of fact that the mover of the resolution can modify as he or she reads them into the record.

Findings of fact, also known as “whereas” statements, should document the key facts of the application, demonstrate the board's rational, fact-based deliberation and relate the review process to accepted planning principles. If the review board determines that it is prudent to request a plan modification--that is, to approve the mosque application with conditions—the conditions should place no lesser or greater demand on the mosque than have been placed on other religious or secular assemblies in their conditional approvals. For conditional approvals as well as denials, it is critical that the public record (1) ties the decisions back to standing codes; and (2) and demonstrates that the ruling does not place a substantial burden that limits the Muslim community’s religious practice. The record should plainly identify the compelling governmental interest, such as public safety or nuisance abatement, that is furthered by the action.<sup>607</sup> It should also make clear that the condition or denial was the least restrictive means available to meet that interest.<sup>608</sup> In short, the record should not reflect any arbitrary or capricious conduct in the consideration of the subject land use proposal.

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<sup>607</sup> “Don’t be afraid to make a distinction between a religious practice and a nuisance (for example, massive holiday displays with amplified music, excessively bright lights, noncompliance with accessibility requirements).” Dalton, *et al.*, *op. cit.*, page 161.

<sup>608</sup> Merriam, *op. cit.*, page 124.

## The High Price of RLUIPA Challenges

The matter of legal challenges under RLUIPA represents another of the act's controversial aspects. If a municipality were to rule against a religious organization in a zoning application and the organization were to sue and win the case, RLUIPA includes a provision that requires municipalities to reimburse the religious organization's legal fees, even if they were provided *pro bono*.<sup>609</sup> There is a high disincentive, therefore, for municipalities to rule against a religious entity and risk lawsuit.<sup>610</sup> Additionally, several legal defense funds concerned with religious liberties have provided powerful representation to RLUIPA plaintiffs. When coupled with reimbursement, the prospect of a strong opponent can also give local governments pause about ruling against a religious entity. Mediation, therefore, is likely to be far better option for municipalities.

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## CONCLUSION

Aggressive protests against mosque developments can leave local planning authorities feeling buffeted by geopolitical issues that are beyond their control. It is normally the case that the only parties paying any attention to land use hearings are the applicant and the few neighboring property owners with personal interest in the project. However, with street protests and media coverage, it can seem as if the whole world is watching local mosque development proposals. Mundane conversations about floor area ratio and impervious surfaces are being replaced by heated disputes over national identity and national security. Having a focused purview on land use, local review boards might think themselves helpless to shape the course of the larger

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<sup>609</sup> Weinstein, *op. cit.* Page 3.

<sup>610</sup> The title of an article that appeared in *Planning* magazine in April 2003 gives a sense of the trepidation that the planning community has felt about RLUIPA: "Church v. State: Just Pray You're Not Sued Under the RLUIPA Statute." April 2003, pages 14-17. Michael S. Giaimo and Dwight Merriam, FAICP, authors.

debate. In reality, municipal officials, planners, and review board members can make a crucial and productive contribution.

At the core of mosque development proposals are two quintessential American liberties: the rights to develop private property and to practice religion freely. The latter, of course, is a constitutionally-protected civil right. Grassroots efforts to exclude mosques from particular neighborhoods, in effect, seek to deny a minority group access to these essential rights and degrade our national commitment to equal access and equal protection. The fair and equitable administration of land use laws, by contrast, reaffirms that commitment. That is to say, even while the purview of local planning officials is defined by municipal bounds, the example of their administrative conduct extends across the nation and to all Americans.

## CHAPTER IX IMPLICATIONS FOR FAITH COMMUNITIES

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### INTRODUCTION

When choosing a development site to construct a purpose-built mosque or to rehabilitate an existing building for use as a mosque, the primary concern for suburban Muslim American communities often is convenience for the greatest number of members. Mosques located close to members' workplaces and homes enable them to attend daily prayers more frequently and with less disruption to their schedules. However, in a political climate in which opposition to mosque construction and expansion is growing across the country, Muslim Americans need to give careful consideration to conflict minimization; that is, choosing those sites that are least likely to cause conflict and most likely to be granted municipal approvals. This is not to suggest that potential conflicts should dissuade Muslim Americans from pursuing development sites they consider to be ideal. As established earlier in this dissertation, the development rights of faith communities are protected by the US Constitution's First, Fifth and Fourteenth Amendments, as well as the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Instead, this dissertation reveals the necessity for faith communities, as well as the advocates and consulting professionals supporting their efforts, to prepare for real estate development by anticipating likely hurdles and understanding options and strategies for reducing conflict in public approvals processes.

Drawing on the conflict and response patterns identified in the case studies, this chapter<sup>611</sup> makes specific recommendations for faith communities planning real estate developments.

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<sup>611</sup> An version of this chapter appeared as part of a previously published report. See: Kathleen E. Foley. *Building Mosques in America: Strategies for Securing Municipal Approvals*. Washington, DC: The Institute for Social Policy and Understanding, 2010.

First, a site-selection tutorial designed to identify locations that are least likely to cause significant conflict is offered. Emphasis is placed on understanding allowable uses in zoning codes and anticipating lines of opposition when variances are required. The value of a neighborhood's existing population diversity and variety of uses is established, and the particular problems of proposing a mosque in a residential neighborhood are addressed. Strategies for streamlining required reviews are also presented. The chapter then turns to the human interactions that can influence outcomes in the development process. Advance troubleshooting with municipal planning officials is encouraged, as are early and frequent interactions with likely opponents. Methods for educating the public about Islam generally and a mosque proposal specifically are offered. The importance of a diverse supporting coalition is stressed. Finally, the chapter suggests conflict management strategies for public review sessions. These include discussion of the faith community's presentation style and approach as well as the establishment of clear and enforceable guidelines for public comment. The chapter concludes by making recommendations for mosque members' public engagement after land use approvals have been secured and their facility has been built. A development review should be regarded as only an initial step in the faith community's integration into and contribution to the broader civic sphere.

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## **PART I: ADVANCED PLANNING FOR THE FAITH COMMUNITY**

As basic preparation for real estate development, faith communities should inform themselves of the protections afforded to religious practice and religious land uses in the United States via the Constitution's First, Fifth and Fourteenth Amendments, as well as the key federal regulation guiding the regulation of religious property development: the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Background information on both are found in

the literature review for this dissertation, Chapter I. Then, long before representatives meet with an architect or file a zoning application, the faith community should think carefully about their dreams, goals and capabilities. A strong internal sense of direction will help the community make wise site selections, explore creative and functional design choices, and strengthen the case that will be made to municipal officials and the public. Concrete development plans will communicate a sense of trustworthiness and stability to municipal review boards and the public.

### **Analyze and Plan for Demographic Expansion and Future Programmatic Needs**

An early step in internal planning should be conducting an analysis of current and projected demographics. Realistic membership numbers will facilitate clear discussions of key planning questions such as building occupancy and parking requirements; these issues have been heatedly contested in the case studies and other mosque reviews. Estimates should be based upon the peak number of attendees at *jum'ah* (Friday congregational) prayers and, if the community is planning to host larger Eid (high holiday) events, for those celebrations as well. Community representatives should think carefully about how membership is growing. For example, how many young families with children regularly attend *jum'ah* prayers? How many Muslim families have moved to the area recently, or have said they would move to the area if a mosque were built? It will be easier to plan for those numbers and secure approvals for all construction now, even if funding limitations require the faith community to present a phased plan.

Aspirations for uses within the mosque and on the site should be similarly considered. Do members hope someday to provide housing for a clergyman and his family; funerary facilities; an elementary school? These ideas should be included in plan submissions from the earliest stages of the review process, and concept approval should be sought for all phases at once. Supporting documentation should be clear about what is to be completed in the various building

phases, and mosque representatives should emphasize their commitment to presenting design details to the public as they become available.

A phased proposal based on sound projections and comprehensive planning can reduce conflict in several ways. First, the Muslim community can use a public forum to detail exactly what activities will take place within its facilities and therefore counter opponents who might suggest that they public cannot be sure what will occur in the mosque; implicit in this claim, of course, is the conflict-sparking notion that what happens inside mosques is illegal and/or dangerous. Second, the faith community is less vulnerable to the common accusation that the land use applicant is trying to “get a foot in the door” by securing approval for a modest project while covertly planning something on a much greater scale and with a larger impact (e.g. a more elaborate campus with a school, community center, or some other facility). Third, future neighbors with traditional land use concerns such as parking, storm water management, and lighting will get a sense of the project’s overall impact from the outset and may be reassured by having an opportunity to influence mitigations during the earliest stages of planning.

Put most simply, conflict-ridden review processes can be difficult for all parties. It is better for a faith community to secure as many approvals as possible in the first round so that the entire municipality is spared the emotionally draining, fractious experience of repeated reviews.

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## **PART II: BROAD CONSIDERATIONS FOR CHOOSING A DEVELOPMENT SITE**

Once mosque leaders have a sense of approximately how much space their community will need going forward, they can begin to identify potential development sites. There is no formula for identifying the perfect site—characteristics will vary from site to site and among

municipalities, and of course specific needs will differ for each Muslim community. However, the case studies demonstrate a number of factors that are likely to reduce conflict regardless of project specifics.

### **Learn the Zoning Map: “As of Right” Development**

Mosque representatives and their consulting professionals should familiarize themselves with the municipality’s zoning map and code. It is important to know how different neighborhoods are zoned and which zones allow houses of worship “as of right.” That is, churches, synagogues, mosques and similar religious facilities<sup>612</sup> are automatically permissible uses in the zone and do not require a use variance or a use permit. This is usually the case in residential zones, and is commonly the case in commercial zones as well.

In zones where houses of worship are not allowed as of right, the applicant commonly must, among other criteria, demonstrate the facility’s “inherent benefit” to the surrounding neighborhood in order to be granted a use variance. A use’s inherent benefit is the contribution it makes to the surrounding community as a function of its very nature—religious properties, for example, usually are considered inherently beneficial because they provide locations for the free expression of citizens’ religion; this is an enshrined constitutional value. In addition, houses of worship commonly provide charitable, educational, social, and recreational services to the broader community. The threshold for demonstrating the inherent benefit of a house of worship is generally quite low, but the language of the discussion invites opposition arguments for why a mosque is not beneficial to neighbors. If engaging in this particular debate can be reasonably avoided by selecting an alternative site, an opportunity for subjective opposition can be eliminated.

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<sup>612</sup> In response to RLUIPA, some municipalities have developed “neutral” zoning codes that treat religious and secular assemblies equally, so these traditional categories are not present in the code. It is more likely in those cases that religious property developments will be referred to simply as “assemblies.”



## **The Challenges of Residential Neighborhoods**

Historically, houses of worship were located in dense residential districts to maximize pedestrian accessibility. For Muslim Americans who worship at their mosque frequently, accessibility is also prized. Although today congregants more often drive than walk to their houses of worship, particularly in the suburbs, zoning codes memorialize the tradition of walkability and generally allow religious properties as of right in residential areas. Establishing a mosque in such a zone may simplify the review process, but it may not necessarily reduce conflict.

Religious facilities are no longer quiet neighbors who only disrupt a residential area on Sunday mornings for a few hours. The range of services and activities that they now provide generally takes place throughout the week and into evening hours, making their noise, traffic and lighting impacts nearly constant. In short, today's religious facilities can be genuinely irritating to surrounding residents and property owners, and neighborhood opponents often have legitimate land use concerns when they resist their development. Members of faith communities should bear this in mind, and even try to imagine their proposal from the neighbors' perspective when they consider residential districts for their real estate projects.

This critical assessment of religious property development should be balanced against the idea that virtually all new developments of any kind in residential zones are characterized by conflict. Particularly in suburban areas, where housing tends to be more segregated from commercial and public uses than in cities, residents often have expectations that their neighborhood will remain a haven for quiet, private living among demographically and socioeconomically similar households. Change, whether it is in the form of proposals for schools or other public services, multi-family housing, or commercial uses, is often vigorously opposed. Justifications include the protection of property values, traffic impacts, and the preservation of the "kind of neighborhood" into which the owners bought. Residents' definitions of place might be based on demographic

homogeneity, uniform architecture and design standards, or single/limited land uses. When the status quo is prized, a mosque, in broad terms, is no different than a convenience store or a nursery school; all proposed new uses are likely to meet with some degree of resistance. Clearly, though, the current political climate and increasing anti-Muslim sentiments in America contribute to misperceptions about the purpose of mosques and drive a particularly vociferous opposition to their development and expansion, particularly in residential neighborhoods.

All this is not to say that Muslim Americans should necessarily avoid developing houses of worship in residential neighborhoods. For many reasons, including convenience, they are highly desirable areas. However, if a Muslim community does choose such a location, they must be prepared to make an extra effort when it comes to neighborhood outreach and public education. In addition, they should enter discussions with municipal officials and neighbors in a spirit of compromise. The standard for neighborliness will be high in a residential area. Being willing to meet neighbors in the middle and beyond on matters like vegetative screening and fencing, parking containment and traffic minimization, and light and sound disruptions will go a long way toward reducing and resolving conflict. Such good faith efforts will help to establish the Muslim American community's commitment to maintaining the neighborhood's quality of life. Of course, even good faith efforts can be rejected and legal action may be required. Especially when pursuing development in a single-family residential zone, Muslim American communities should be prepared to invest resources in legal counsel.

### **Minimize Required Municipal Reviews**

The fewer municipal approvals required for a mosque project, the less complex and less conflict-ridden the overall review process is likely to be. Avoiding a use hearing is one way to reduce reviews; avoiding site variances is another. Can the Muslim community achieve the building size and form it desires under existing setback, height, and lot coverage requirements

in a particular zone, or will it have to request a number of variances to do so? The need for multiple variances may reinforce the perception that the mosque is not appropriate for the selected parcel of land, and may cause opponents to call for its relocation. Such a scenario is more likely if the community wants to rehabilitate an existing structure built before local zoning laws were enacted. The building as constructed would have been grandfathered, but any change in use or substantial structural modifications will require either compliance with current zoning and building codes or variances from them.

Finally, building a mosque in an historic district also is likely to complicate review processes and add to potential conflict. Although mosques have been built across the country for the better part of a century, it is really only in the last twenty years that they have been established in any meaningful numbers or attracted public notice. As such, Islamic forms are not yet thought of as part of the American architectural lexicon in the same way that churches and synagogues are. Domes and minarets, the mosque's most recognized design elements, are largely still considered "foreign" and "out of place." Although this study did not particularly examine mosque construction in historic districts, it seems reasonable to assume that introducing Islamic forms in landmarked zones might result in opposition based on their design compatibility and appropriateness.

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### **PART III: SPECIFIC FACTORS TO CONSIDER IN SITE SELECTION**

The case studies demonstrate the importance of taking the following factors into account when making site selections.

### **Neighborhood Type/Diversity of Uses**

As described above, single-family residential neighborhoods may be most resistant to the introduction of a house of worship, and particularly to a mosque. The more diverse an area is in terms of the uses it contains, the more likely that property owners and residents will be open to a new or expanding mosque, as was demonstrated in Savannah. A mixed use neighborhood that already includes, for example, commercial properties, multi-family homes, and, importantly, other houses of worship, is less likely to feel imposed upon by a new religious facility—variety and coexistence are already part of its daily rhythm.

### **Resident Diversity**

Similar to use diversity, existing racial, ethnic, and socioeconomic diversity can ease local acceptance of a mosque's attendees. A neighborhood that already comfortably hosts people from a variety of backgrounds is likely to be more open to the range of ancestries typical among Muslim American communities. Racially or ethnically homogenous neighborhoods can feel threatened by the introduction of people who do not look like them or worship like they do, and resistance based on fear, ignorance and a sense of intrusion can result.

Similarly, property owners who have self-segregated by class and income in higher net worth districts can perceive that the introduction of will threaten existing property values. Faith community leaders should try to identify neighborhoods with as many types of diversity as possible: racial, ethnic, socioeconomic and, as previously argued, land uses. Even better, they should try to understand the membership's own geographic distribution and seek developable parcels located near clusters of member residences or workplaces. Those members will already have brought diversity to the neighborhood, and will be familiar faces in the neighborhood, and for them, the locational convenience of the site would be built in.

## **Recent Development and Traffic Pressures**

A neighborhood that has built out rapidly in recent years or felt the pressure of encroaching commercial development may feel that *any* additional new uses are unacceptable, let alone a mosque. Muslim American leaders should attempt to understand the recent development history of the districts around sites being considered, as well as other major developments likely to be proposed soon. They should also identify other high impact uses already located nearby, such as schools, hospitals, and public services. The same concept applies to traffic issues; if an area is already burdened with traffic and congestion, property owners are unlikely to react positively to the prospect of even more cars being added by Muslim worshippers, or anyone else for that matter.

## **Sufficient Parcel Size**

Muslim community leaders should not consider parcels that appear to be too small to contain the project's envisaged uses, both now and in the future. Parking calculations should consider needs on peak use days (viz. Friday, during Ramadan, and the two high holy days: Eid al-Fitr and Eid al-Adha). In two of the three mosque proposals I studied, opponents voiced concerns that the Muslim communities were trying to fit too much on lots that were too small; worries about overflow parking on residential streets became a focus of criticism.<sup>613</sup> Mosque representatives should make clear that their community is committed to minimizing all impacts on surrounding properties. If at all possible, mosque planners should design beyond code requirements for parking, screening, garbage containment, and other perceived nuisance issues. When publically presenting plans and privately negotiating with opponents, representatives should emphasize the faith community's forethought. This approach helps to reduce conflict.

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<sup>613</sup> Parking is consistently a point of contention for houses of worship regardless of religion.

### Understand the Process/Troubleshoot

Before preparing a development application, a faith community's leaders should request an advance meeting with the appropriate planning staff in their municipality. The goals of this meeting should be to help leaders identify the person(s) most likely to be able to help mosque planners and designers understand what codes will be applicable, which municipal boards will review the mosque proposal, and what those boards require to ensure that the application is ready for review. Depending on the size and structure of the local government, mosque leaders' first contact may be with a professional planner, a code officer, a clerk, or perhaps a building inspector. Mosque representatives need not have full plans or all the details of the development project worked out—in fact, at this stage it is better if the plans are still mainly preliminary. The idea is to offer a thumbnail sketch of plans so that the Muslim community can get a sense of what will be required of it, and hopefully troubleshoot any potential areas of conflict before reaching the public hearing stage of review. Properly understanding basic requirements will start faith communities off in the right direction and hopefully help them avoid costly errors as their plans develop. A mosque representative should be charged with keeping careful records of all informal meetings with municipal officials and documenting them with letters, memos or even minutes that confirm details of the conversation, what was agreed, and action items.<sup>614</sup>

A key question Muslim American leaders might ask at this early stage is how the local building code calculates occupancy and parking for houses of worship and other places of public assembly. Because mosques do not use fixed seating for prayers, the standard “x number of

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<sup>614</sup> Dalton *et. al* recommend this strategy not only to ease recall of details, but for use in the case of a RLUIPA lawsuit; the faith community's documentation of informal meetings may be admissible as evidence. He further recommends: “During the formal meetings, retain a court reporter to transcribe what is said. It is remarkable how many times the [municipality's] video or audio tape machine ‘malfunctions’ during critical hearings.” See: Daniel P. Dalton, et, al. “The Top Ten Tips,” Michael S. Giaimo & Lora A. Lucero, eds. *RLUIPA Reader: Religious Land Uses, Zoning and the Courts*. Chicago: ABA Publishing, 2009. Page 157.

persons per pew” used for churches and synagogues is not applicable. Logically, one simply refers to the International Building Code (IBC) guidelines for assembly spaces without seating. However, as was the case in the Voorhees study, municipal officials can feel unprepared to deal with houses of worship that do not follow the conventions to which they are accustomed. Such a lack of familiarity can lead to confusion, and confusion can lead to conflict.

### **Assemble a Team**

Ideally, Muslim American communities should assemble a team of professionals to prepare and submit applications, make presentations in public hearings, and address any legal issues that might arise as part of the public review process. These might include a consulting planner, an architect and/or engineer, and a land use lawyer. A planner might also help with a zoning ordinance analysis during the site identification phase and advise areas in which to focus real estate searches.<sup>615</sup>

Professionals can be costly and hiring them may be beyond the financial means of some faith communities; however, the investment would go a long way toward minimizing the impact of organized opposition. In cases where there simply are no resources for professional consultation, the mosque’s leadership should first assess the skills within the community. For example, are any of its members employed in planning, architecture, or law? Might some of them donate their time and in-kind services? Leaders should ask members to explore their networks. Do they know anyone who might assist the community either at a reduced rate or *pro bono*? Leaders should also reach out to established mosque communities and ask who assisted them with their land use proposals.

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<sup>615</sup> Depending on local policies, municipal planners may be able to assist with this type of review, as well.

When selecting consulting professionals, however, faith communities should exercise caution. It is critical that they have the right people working with them, particularly in the contentious environment currently surrounding mosque developments. Although financial constraints and personal relationships may make it difficult to decline, for example, an immigration attorney who has offered services, in the end a person working outside of his or her area of expertise may end up costing the community more than it saves them. It is better to identify experts and work with them in a limited, affordable capacity at those process junctures where their experience and knowledge will be most effective, rather than accepting free services and/or expertise from a professional whose skill set does not meet the project's specific needs.

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## **PART V: ADVANCE PLANNING WITH NEIGHBORHOOD, LIKELY OPPONENTS & LIKELY SUPPORTERS**

### **Educate the Public**

At the core of grassroots opposition to mosques often is the fear of the unknown, coupled with powerful and frightening media-generated images of Muslims, as well as and the country's increasingly hostile racial and political climate. The case studies presented above demonstrate that the most effective means of addressing that fear is engaging in proactive, open communications with the surrounding neighborhood and broader municipality. Long before mosque representatives enter the public hearing stage of a land use review, the faith community should hold open sessions in a neutral location such as a local community center or another religious institution. Invitations should be extended to neighbors and other parties likely to oppose the mosque proposal. Mosque representatives should be prepared to answer questions about Islam; perhaps members could even invite attendees to observe prayer rituals. Most importantly, the session should demonstrate the local Muslim community's diversity. Mosque leaders should enlist a variety of members to attend and interact with guests—men and women,



young and old, immigrants and those born in America. If there is to be a speaker, the community should select a recognized figure if possible—perhaps a well-known doctor, a popular public school teacher, or a parent who has served as a Little League coach. By presenting familiar faces, the Muslim community will demonstrate itself to be a thread already woven into the local fabric.

It is essential that conceptual drawings for the mosque project (viz. sketches that communicate a design in preliminary form) be made available for review during the education session. Additionally, the Muslim American community should present ideas for how the mosque will be used for activities other than prayer. Soliciting comments from the public will help to identify problem areas before the faith community invests too much time and money pursuing them. More importantly, it will give the broader community a sense that they are part of the mosque's planning and not just being handed a *fait accompli*. This does not mean that the Muslim American community needs to compromise its ideals or cherished plans; rather, community leaders should agree in advance on which elements of the plan are non-negotiable and which ones might be open for modification (for example, exterior color palette, lighting configuration, and dumpster placement). Being willing to meet opponents' needs through flexibility will demonstrate the Muslims community's commitment to cooperation and neighborliness. It will also give opponents a sense that they were able to influence outcomes in a meaningful way.

A public information session won't appeal to some opponents; in the case of those who are particularly upset, Muslim leaders might consider extending invitations to meet privately with them and try to address their particular concerns. Often, sitting face-to-face and speaking earnestly will resolve conflict far more effectively than any other method. It also humanizes the faith community as well as opponents and challenges the image of "us" versus "them." This is not to suggest that personal, face-to-face conflict resolution is easy, but personal interactions

are the best forum for people to learn about each other and meet each other's needs. No public hearing can accomplish a comparable level of conflict resolution.

This recommendation introduces a critical concept for faith communities to understand. Not all opponents are equal; they don't all have the same reasons for resisting a mosque proposal. Based on my research and observation, I contend that there are at least three categories of opponents: (1) those whose opposition is based on fear and/or bias; (2) those with legitimate land use concerns; and (3) those who use the language of land use to cloak fear and/or bias.

Without doubt, some opponents are simply bigoted and/or motivated by fear, and addressing the root ignorance and bias behind those positions is difficult and painful for parties to any controversial land use application. Counterintuitively, however, this type of opposition may be the easiest to deal with from a public process standpoint.

The requirements of RLUIPA can act as a neutralizing agent, especially in a tense and emotionally charged hearing environment. As mentioned earlier, the act requires that a review board's decision be made without bias and based on the objective facts of the case. Deliberations must be grounded in substantiated evidence and rational planning considerations. Municipal officials have a responsibility to control hearings and maintain focus on issues within the board's purview. Comments related to creed and ritual should not be topics of board deliberation or public comment periods. Certainly, comments that suggest that the proposed mosque or an individual affiliated with the mosque has links to terrorism have no place in a land use hearing. Legally, allowing such discussion could jeopardize a municipality's position if their decision were challenged in court.

To ensure that kind of control happens in public hearings, Muslim leaders need to respectfully insist upon it, communicating to municipal officials that they understand the boundaries that RLUIPA establishes. It will be helpful for Muslim leaders to request an advance meeting with the municipal attorney, as well as with lead planning staff and perhaps chairs of the review boards that will adjudicate their development application. In a respectful, non-confrontational way, mosque representatives can ask what procedures are in place to manage board discussion and public comment. They should communicate their expectations that the ensuing discussions will focus solely on issues over which the board has purview, and that personal attacks or derogatory statements about Islam and Muslims by board members or the public will not be allowed. It might be helpful to ask about how violators of established ground rules will be addressed and removed if necessary, and whether police officers will be made available to provide security if needed.

Certainly, biased-based opposition catches headlines and cameras, and in the spotlight can seem mammoth. But based on my case studies, I argue that many, if not most, development opponents, have traditional land use concerns. Muslim American communities should begin working with their local critics under the assumption that their land use concerns are legitimate and meaningful. If mosque leaders address legitimate land use problems, critics whose opposition is based on them should be satisfied and stand down. However, if parties keep returning to the table with new land use complaints, it is likely that they are the third category of opponent—those who speak about land use issues but have underlying, bias-based motivations. In many ways, this nuanced opposition can be even more challenging than openly bigoted protestors, because they seem never to be satisfied with project modifications. In attempting to meet their shifting needs, the faith communities may expend precious time and financial resources. Unless carefully managed, this type of resistance can also extend a review process beyond what might otherwise be required. It is important that municipal officials and

Muslim leaders stay focused on the legal and ordinance-based requirements for a project. Once a faith community has met those obligations and compromised to address the reasonable requests of surrounding property owners, the municipality should be pressed, respectfully, to vote on the application. Maintaining a positive and open working relationship with professional planners and other officials in the municipality will be helpful in this regard, as would the advocacy of a land use attorney.

### **Build a Supporting Coalition**

In advance of public hearings, Muslim leaders should reach out to likely allies and seek their support. These might include other religious communities of all denominations, local chapters of the American Civil Liberties Union (ACLU), good government watchdog groups, and professional associations and civic groups with which mosque members have affiliations. Such allies could assist the development proposal by reviewing conceptual plans for the mosque and providing feedback on areas of concern. In the public hearing phase, they might participate in comment periods and perhaps write letters to the editor. And, should arbitration between parties be required, supporting coalition members might effectively serve as mediators.

Given the national political context that has evolved for mosque developments, it may be wise for mosque leaders to meet with standing government officials and candidates for office to seek their support for a civil, objective review process that protects the due process rights of Muslim Americans. If despite the best efforts of the mosque leadership the conflict escalates, the community can reach out to Muslim American advocacy groups such as the Council for American Islamic Relations (CAIR) and the Islamic Society of North America (ISNA) for public relations and legal support.

### **Hearing Management**

In advance of public sessions, it may be helpful for Muslim leaders to request a private meeting with the municipal attorney, as well as with lead planning staff and chairs of the review boards that will adjudicate their development application. If the Muslim community has a land use attorney or other legal support, he or she should attend as well. In a respectful, non-confrontational way, mosque representatives can ask what procedures are in place to manage board discussion and public comment. They should communicate their expectations that the ensuing discussions will focus solely on issues over which the board has purview, and that personal attacks or derogatory statements about Islam and Muslims by board members or the public will not be allowed. It might be helpful to ask about how violators of established ground rules will be addressed and removed if necessary, and whether police officers will be made available to provide security if needed. Again, this and all private meetings and their outcomes should be documented in some way.

### **The Face(s) of the Mosque**

Ideally, the team of professionals supporting a Muslim community—lawyers, architects and consulting planners—would prepare the written submissions related to its mosque development application, present the application in public sessions, and respond to questions from review board members. As previously mentioned, however, communities may not be able to afford such intensive representation. In that case, their leaders will need to make careful decisions about who will be the public face(s) of the mosque, and in which capacities.

It is likely that a president, board chair or equivalent leader will represent the mosque in public hearings and in the press. In Muslim American communities these individuals are often

respected male elders. Depending on the particular circumstances of an application and the likelihood that the proposal will draw opposition, an elder immigrant may not be best person for the job, or at least not the only one. The faith community should consider whether they want one or several people to present the mosque application. A separate spokesperson(s) who interacts with the press may be advisable, as well. The public face(s) of the mosque should consist of strong public speakers who can face confrontation calmly and keep a cool head, manage details well and think creatively on his or her feet. To increase the likelihood that the public will respond positively, or at least neutrally, to the representative, the faith community might choose individuals who grew up in the locally or who are otherwise involved in the local community. They should demonstrate the Muslim community's diversity and its reflection of the American melting pot—consider women (both those who wear *hijab*—a headscarf and those who do not) as well as members of different ethnicities and ages.

### **Member Participation in Public Hearings**

It can be helpful for other mosque members to attend public sessions as audience members. The more visible the faith community is, and particularly the more visible its diversity is, the better. It is critical to offer an image of Muslims that differs from the media's negative stereotypes. Mosque leaders should be sure that the elderly, women and, when appropriate, older children are in the audience. As with advising professionals, Muslim leaders should carefully consider who will speak in support of the proposal during public comment periods. Encourage well-spoken members who will stay on message with issues of purview to participate. Leaders should reinforce with potential meeting participants exactly what is expected of them—respectful, civil engagement that is free of personal attack and proselytizing—and might even consider asking to review speakers' proposed comments.

## Translating Faith: Use Familiar Language and Terms

The majority of Americans have had only limited exposure to Islam, and most of that has been through the lens of the mainstream media and negative political events. As such, their familiarity with the religion, as well as its practices and related vocabulary, is limited. Mosque representatives should always start with the assumption that the professionals with whom they are working, the municipal officials who will review the mosque proposal, and the public who will respond to it know nothing of Islam. The faith community's respectful guidance and teaching can help reduce potential misunderstandings and resulting conflicts. Muslim Americans should limit their use of Arabic terms when referring to elements of their building and requirements of their religion. For example, use “mosque” rather than *masjid*, “call to prayer” rather than *adhan*, “congregational prayer” rather than *jum’ah*, and “sermon” rather than *khutbah*. Terms that impart commonality will help offset perceptions of Islam as foreign or incompatible with the predominantly Judeo-Christian American culture.

The traditionally transitory nature of mosque affiliation can be difficult for non-Muslims to understand. In Muslim-majority societies, where mosques are common and conveniently situated, an individual may attend several different congregational mosques or *musallahs* without considering himself or herself a “member” of any of them. In the United States, where mosques are few and far between, Muslims tend to affiliate more strongly with a single mosque and identify with it as a “family” mosque. Still, in my research, individual Muslims, particularly those of immigrant origin, often chafed at the terms “member” or “membership.” They struggled in public meetings for terms to describe their faith community and to explain the fluidity of attendance. Alas, in listening to hearing recordings, it is clear that their attempts to accurately represent the fluidity of attendance patterns only created confusion and made them appear shifty, as if they were trying to hide something. To avoid this pitfall, a mosque’s speaking representatives should use terms commonly applied to Christian and Jewish communities like

“member” and “congregation.” Muslims understand that the meanings of these words in their usual context do not exactly fit Islam. However, their familiarity to the public will help audiences understand the proposal and relate to the Muslim community. Educating the public and easing fears is far more important than any nuances that may be lost in translation.

### **How Much to Present Regarding Islamic Practice**

The way a community prays and who prays with its members are not matters of purview for a planning board, zoning board, or other municipal boards. Such information is protected by the First Amendment and segregated from public scrutiny by the separation of church and state. In theory, the “who” and “how” of a community’s faith should have no influence on the outcome of a development proposal. But theory and reality are very different things. Islam is a mystery to most public review board members, as it is to the majority of Americans. Board members are human—their ignorance may contribute to fears they may harbor about Muslims, and may, in turn, influence their review of the proposed development project. It is important, then, without compromising its rights and freedoms, that the faith community’s representatives provide some basic information about Islam and how it will be practiced in the proposed structure.

#### *Prayer Times/Numbers of Attendees*

Muslims should explain, in simple terms, that they are required to pray five times a day, but only once weekly in congregation (Fridays around 1:00 pm). Speakers should make clear that attendance at other prayer sessions will be minimal most days and times since Muslims pray mostly at home or in their places of work or school due to distance and time constraints. They should stress that the largest regular traffic load and building occupancy will be generated by the Friday congregational prayer, and stress that this is outside of normal rush hours and during most people’s workdays. This is an important point to stress—the impact of the mosque’s



congregational prayer on a neighborhood will be less than what might be expected from Sunday morning services, when neighbors are usually at home.

To illustrate the point, presenters might provide expected average attendance numbers for daily prayers and jum'ah. But keep the discussion streamlined and simple. Trying to explain, for example, that prayer times coincide with sunrise and sunset and therefore shift slightly throughout the year, is likely only to confuse board members and the audience and add to tensions. Speakers should provide that level of detail if asked, but on this topic and all others, in general they should aim to keep it simple.

#### *High Holidays and Other Special Events*

Referring to Ramadan, Eid al-Fitr and Eid al-Adha as “high holidays” can help review board members and the public relate to them. While obviously not direct comparisons, it places the Eids on par with Christmas, Easter, Passover and Yom Kippur—people can relate to the land use impacts of those events. In particular, they relate to the capacity crowds on holy days, and the traffic and parking problems that result.

Traffic and parking, at any time of year, tend to be THE most contentious issues for any religious land use proposal, not just mosques. To prepare, faith communities should seriously consider proactively investing in a traffic study prepared by a reputable, independent traffic engineer. It will provide objective, *real* data on the likely impacts that worshippers' cars will have on the surrounding neighborhood during normal usage and on high holy days. This data can be used counter opponents' speculations about impacts—factually and defensibly.

Of course there *will* be real impacts during high occupancy events, so it's important to plan carefully for overflow parking management. One successful strategy is to approach the owners

of nearby, underutilized parking lots and establish periodic rental agreements. Not only does this keep cars off surrounding streets, but Muslim communities can avoid investing money in constructing their own overflow lots which will themselves be underutilized. This approach also provides a desirable option for the municipality—review boards can avoid having to approve another undesirable swath of impervious surface.

### *The Question of the Adhan*

Perhaps the least understood and most controversial element of mosque review processes is the *adhan* (the call to prayer). In the case studies and in many other developments reviewed for this research, neighbor concerns that the call to prayer will be broadcast, either immediately or at some point in the future, dominate debate. Most Muslim communities in the United States do not broadcast the call to prayer (including the case study mosques) since it serves little purpose among a largely non-Muslim population. However, mosque leaders should be aware that legal precedent does support the *adhan* at decibel levels equivalent to those of ringing church bells.<sup>616</sup>

If broadcasting the call to prayer is a route that a Muslim community wishes to follow, its leaders should understand that it is likely to increase tensions around their proposal. Representatives should be clear about the community's intentions from the preliminary stages of the proposal's review so that opposition to it can be addressed early. Speakers will need to be clear about what the *adhan* is—in a number of cases, opponents have called it an attempt to intimidate or dominate the surrounding neighborhood.<sup>617</sup> Explaining its purpose and providing a translation

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<sup>616</sup> Kathleen M. Moore. *Al-Mughtaribun: American Law and the Transformation of Muslim Life in the United States*. Albany, New York: State University of New York Press, 1995. Page 132.

<sup>617</sup> In a famously controversial 2004 decision, the Hamtramck, Michigan city council modified its noise ordinance to accommodate the call to prayer at the same decibel level as church bells. See: <http://www.amren.com/news/news04/04/27/hamtramckmosque.html> (accessed 10/3/2010).

may help ease such fears. Opponents may be quelled if the Muslim community offers to broadcast the *adhan* only for congregational prayers and on the Eids or other special occasions.

### **Accessory Uses**

Christian and Jewish denominations commonly provide programs to their members beyond worship and offer their facilities to the broader community for social activities and charitable purposes (e.g. food pantries, Girl Scout troop meetings, and 12-step group sessions). With that model in mind, review board members and the public may anticipate that Muslims intend to follow this practice, as well, and wonder what the impact of those services will be on the surrounding neighborhood. Lack of clarity on the part of mosque representatives regarding the faith community's intentions may jeopardize its credibility and increase conflict. To maintain credibility and potentially reduce conflict, mosque representatives should speak straightforwardly about what uses beyond worship the faith community intends to include in its facility, and emphasize those uses that will be of potential benefit to non-Muslims. This will demonstrate the civic-minded nature of the Muslim community and its commitment to the broader municipality. Mosque leaders should remember, however, that such accessory uses may not be afforded the same protections under RLUIPA as are those uses directly related to worship.

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### **CONCLUSION: BEYOND THE PUBLIC APPROVALS PROCESS**

The scrutiny of a mosque development will continue long after public hearings are closed. It is critical, therefore, that the Muslim community meet and even exceed the conditions that were imposed on the project as part of its approval. That is, the faith community should live up to the promises it made to the municipality and the surrounding community, such as adhering to

occupancy limits, being mindful of noise disruptions, maintaining the shrubs that buffer property lines, and making sure that members park only in designated areas and refrain from blocking driveways or walking across neighboring lawns. Not only will this kind of self-monitoring help keep neighbors satisfied, it will make mosque members' experience in the neighborhood more pleasant.

From a more universal perspective, each Muslim community's example shapes public opinion and contributes to the response that other mosque proposals will meet. When a faith community breaks the promises it made to its municipality and its neighbors, negative perceptions of mosques, and religious properties in general, are reinforced and perpetuated. Conversely, when a Muslim community is a good neighbor, that positive reputation will help counter negative perceptions. With only one exception, the neighbors interviewed for the case studies said that none of the fears they had about the mosque during the review process were realized after the facilities opened. They admitted, some to their chagrin, that the Muslim community had turned out to be a good neighbor after all. This evolution of thinking was not coincidence or luck; the subject faith communities have worked hard to be positive elements in their neighborhoods.

Perhaps even more important than basic self-regulation is the need for broad outreach on the part of the Muslim community. Mosque members should stay engaged with the facility's immediate neighborhood and the surrounding municipality. This includes continued communication with critics. Maintaining an open door policy which allows observers to come to the mosque and learn more about what types of activities take place there, as well as something about the faith itself, will give skeptics information they need to transform their thinking. Such outreach may take the form of open houses and special events, or perhaps private sessions with interested individuals. The mosque's membership should be encouraged to engage in—even host—local community events such as street cleanups, neighborhood association

meetings and the like. Perhaps the facility's meeting rooms could be made available to community groups. Most importantly, members should participate in the local political process as voters and volunteers; some may have become interested in public process because of the experience of land use hearings and might consider applying for positions on the zoning or planning board, or even running for local office. Regardless of the activity, the goal is to make the Muslim community a valuable part of the broader community and to demonstrate that its members are good neighbors and good citizens.

Ideally, of course, Muslim Americans will engage in civic matters and social services regardless of whether or not they are involved in a real estate proposal. More regular civic participation will establish them as active partners in the broader community and build relationships that are invaluable to any number of endeavors beyond real estate development. To belong in and be accepted by a local community, Muslims must invest themselves in that community.

## CONCLUSIONS

This dissertation contributes a number of key findings on mosque development controversies in America's suburbs. They are summarized in this final chapter, along with the contributions that the study makes to the literatures and theory of planning and conflict management; of religious land use proposals; of immigrant integration; and of design for mosques in the United States. The limitations of the work are also presented, and, launching from them, recommendations made for related future research.

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### PART I: SUMMARY OF KEY FINDINGS

A number of this dissertation's key findings reshape our understanding of mosque development controversies in America's suburbs. First, the sources for mosque development controversies are complex, and stem from economic, social and geopolitical sources. These include the growing numbers of immigrants of all races and ethnicities settling directly in suburban districts at the same time that suburban poverty is rising. The resulting competition for employment and public services creates tensions and sensitivities around all aspects of suburban immigrant life. The desire of immigrants to develop real estate for the purposes of worship, particularly when those institutions are not considered in the American mainstream, further exacerbates tensions. For Muslim Americans, the post-September 11<sup>th</sup> political climate in America and national and international events involving Muslims add another layer of suspicion around and resistance to their development proposals. Critically, this research revealed that, counter to press accounts and public perceptions, the *amount* of conflict around mosque development has not increased dramatically in the decade following September 11<sup>th</sup>, 2001. Instead, I demonstrated that it is the

*character* of the conflict that has amplified. I explored the role that an organized, well-funded opposition has had on local resistance to, media coverage of, and political response to mosque development proposals. It is clear that the interplay of anti-Muslim ideologues, conservatively-leaning think tanks, media outlets, and policy makers and legislators is shaping local responses to the development proposals of Muslim American faith communities.<sup>618</sup>

However, careful scrutiny of my case studies revealed that the drama of the intertwined social, economic and political motivations for mosque opposition can obscure the traditional land use concerns that are part and parcel of Islamic Center development, just as they are in other types of religious land uses. The scale of the proposals, along with the accompanying traffic, noise and other nuisances they generate, result in conflicts that are typical of any proposal perceived to change the character of a suburban neighborhood. This dissertation looked beyond the drama of mosque development controversies to identify typical land use concerns generated by such proposals and compared them to concerns commonly raised in other locally unwanted land uses.

I found that local governments are well-positioned to adjudicate proposals for places of worship equitably, and to mitigate the conflict around them, when they have in place comprehensive plans that anticipate a municipality's inclusion of religious land uses, and have zoning codes and other ordinances that neutrally address religious and secular assemblies. Further, I found that planners and review board members who are trained to deal with religious land uses as well as conflictual development proposals, and who have experience in one or both, were more effective agents for reducing tensions and bringing public review processes to successful outcomes for various stakeholders. Specifically regarding the Religious Land Use and

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<sup>618</sup> I again refer the reader to the study *Fear, Inc: The Roots of the Islamophobia Network in America*, published by the Center for American Progress at <http://www.americanprogress.org/issues/2011/08/islamophobia.html>.

Institutionalized Persons Act (RLUIPA), the research revealed that it is evolving to serve as a source for conflict management strategies that can be drawn upon by local officials, and to be a key tool for countering exclusionary zoning tactics.

The dissertation also provides essential insight into proactive and responsive conflict management methods that Muslim American faith communities can use when planning and proposing their real estate development plans. They include long-term planning for programmatic needs and anticipated growth, and methodical, thoughtful selection of development sites to minimize resistance. The case studies made clear the need for faith communities to understand and advocate for their property development and free practice rights, as well for them to build coalitions with political, interfaith, and host-community-based allies. I highlighted the importance of building a positive relationship with the host community during project planning, including being open to neighbors' concerns and being prepared to accommodate them when possible. Finally, I found that faith communities have more successful long-term experiences in their host communities when they maintain positive relationships with neighbors and municipal officials beyond the public review process.

Finally, from an architectural design perspective, the case studies and analysis show that the form of the mosque in America is shaped by public process. That is, neighborhood and municipal responses to proposals influence design choices made by Muslim Americans and their architects. In that sense, the dissertation reveals that mosques as built in this country are quintessentially American architectural products—forms shaped for better or for worse, depending on one's perspective, by public collaboration and democratic process.



### ***Planning and Conflict Resolution***

The dissertation makes several contributions to the literature of land use planning. The examination of exclusionary tactics in land use has mostly focused on groups considered minorities because of income, race and ethnicity. There has been a very limited exploration of a minority's religion as a category of discrimination in zoning; the most detailed study I found was conducted in the United Kingdom.<sup>619</sup> My examination of an American religious minority gives focus to land use discrimination based on faith in the United States. Further, I widened the boundaries of the literature on locally unwanted land uses (LULUs) and Not In My Backyard (NIMBY) responses to them.<sup>620</sup> Most such examinations focus on contentious environmental and human services projects. I analyzed religious property developments as locally unwanted land uses, and considered how perceptions of NIMBYism influenced responses to the projects' opponents. Further, by comparing the conflict management strategies launched by stakeholders in the case study developments with those commonly mounted in other types of LULU developments, I determined that the successes of the latter can be translated to the stewarding of suburban mosque proposals. These include community outreach and public education; identifying, acknowledging and understanding root causes of opposition; maintaining focus on the facts of the application and process requirements rather than emotional responses;

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<sup>619</sup> The most insightful exploration I found of religion as a basis for exclusion is Richard Gales's "Locating Religion in Urban Planning: Beyond 'Race' and Ethnicity?," *Planning, Practice & Research*, Volume 23, Number 1, February 2008. Pages 19-39.

<sup>620</sup> In particular:

Michael Dear. "Understanding and Overcoming the NIMBY Syndrome." *Journal of the American Planning Association*, Summer 1992, Volume 58, Issue 3, page 288.

Timothy A. Gibson. "NIMBY and the Civic Good," *City & Community*, Volume 4, Issue 4, December 2005, pages 381-401.

Helene Hermansson. "The Ethics of NIMBY Conflicts," *Ethical Theory and Moral Practice*, Volume 10, Number 1, February 2007, pages 23-34.

Carissa Schively. "Understanding the NIMBY and LULU Phenomena: Reassessing Our Knowledge Base and Informing Future Research," *Journal of Planning Literature*, Volume 21, Number 3, February 2007, pages 255-266.

Debra Stein. *Winning Community Support for Land Use Projects*. Washington, DC: The Urban Land Institute, 1992.

Lawrence Susskind. *Using Assisted Negotiation to Settle Land Use Disputes: A Guidebook for Public Officials*. Cambridge, MA: Lincoln Institute of Land Policy, 1999.

Lawrence Susskind and Patrick Field. *Dealing with an Angry Public*. New York: The Free Press, 1996.

negotiating on controversial aspects of an application; identifying alternative solutions to problematic elements; and mitigating real and perceived impacts of the project.

In NIMBY analyses of development opposition, protestors are often viewed as irrational, selfish, protectionist and without concern for the greater civic good. These charges are lodged when property owners resist a project by agreeing that it is necessary, but not appropriate for their neighborhoods. Problematically, NIMBY accusations tend to paint opponents with a single, broad brush, assuming that they are all motivated by the same issues. As a consequence, the true motivations of individual parties may not be identified. Accusations of NIMBYism drown out legitimate land use concerns that might reasonably be mitigated with appropriate attention and care from the applicant, planners, and municipal officials. In the case of mosque development proposals, as exemplified in the case studies, opponents can be lumped together under the banners of bigotry, racism, xenophobia and Islamophobia. This dissertation more completely identified the range of motivations for mosque opponents, and proposed means to resolve differences among parties to conflict. I established categories of mosque opponents: those whose resistance is based on traditional land use concerns; those whose resistance is openly based on fear, bias and exclusionary desires; and those who veil true exclusionary desires in the language of traditional land use concerns. Significantly, I proposed specialized approaches that faith communities and municipal officials can make to each category of opponent.

In addition to diversifying approaches to opponents of mosque developments, this work provides a broader understanding of the parties who shape conflict resolution. Public planners and municipal officials are often understood to be the drivers of successful outcomes in contentious land use proposals. However, planners and review board members can be constrained by the limits of the legal process that forms the structure of application reviews. They must follow a format of presentation and response and meet a procedural checklist that

allows little room for forging understanding and acceptance. This research identifies the critical role of the land use applicant in mitigating and resolving conflicts. The subject faith communities and their allied advocates functioned as transformative agents in their proposals' review processes, functioning independently of planning professionals to mitigate disputes. Through applicant-led strategies for outreach and education, they filled the void left by the constraints placed on planners and review board members. They built bridges to host communities, found alternatives to problematic aspects of their applications and, in process, forged more stable long-term relations with neighbors than might otherwise have existed.

There was some disagreement among research participants, and particularly review board members, about the degree to which opponents to mosque development should be allowed to express anger and bias in public planning sessions. My view based on my findings is that such expressions distinctly escalate conflict and twice victimize the minority group seeking membership in a community. Attempts at exclusion are the first victimization, and the vitriol of opponents is the second; *de facto*, the public planning process serves as the vehicle for both. To avoid this problem, I propose a two- (or several) pronged approach to addressing the anger of fear and bias. I argue that different motivations for opposition must be addressed in separate forums. For the legal integrity and control of the land use review process, public hearings should be limited to topics within the purview of review boards. However, simply banning biased statements and speculation based on fear does not stop the influence they have on a land use reviews. They do need to come out in safe and productive ways. Properly managed, expressions of anger and bias, followed by education, can positively shape public perceptions and forge acceptable conclusions to conflicts. Therefore, I propose that expression and education are appropriately conducted during outreach efforts made by faith communities and/or discussion sessions hosted by third parties or mediators, and not as part of public hearings.

### ***Religious Land Use and Institutionalized Persons Act of 2000***

As discussed in the dissertation's literature review, previous scholarly writing on RLUIPA has focused on its goals, requirements and the definition of its boundaries via the judicial system. The dissertation goes beyond these nuts and bolts aspects of RLUIPA to examine the act as a tool for conflict management. My research reveals that as the process requirements of RLUIPA are modified by case law and implemented, it is increasingly effective as a neutralizing agent in tense and emotionally charged public processes. The punitive aspects of RLUIPA encourage municipal officials to maintain focus on issues of purview and away from extraneous contentious issues. By extension, potential sources of conflict within public hearings are reduced. RLUIPA's punitive structure—and particularly its provisions guaranteeing a faith community's recovery of its attorney's fees from the municipality, even if they were provided *pro bono*—additionally catalyzes favorable decisions for faith communities.

RLUIPA cannot mandate the resolution of underlying issues in individual bias-based disputes. It can, however, drive social change in local communities over time. In my analysis, I compared RLUIPA to the 1968 Fair Housing Act, which legislated equal access to housing for minorities and members of other protected classes. Over four decades, the FHA has increased racial and socioeconomic diversity in municipalities at a rate which likely would not have been achieved otherwise. As with FHA and housing, I argue, RLUIPA will increase the diversity of religious practice in municipalities over time. Already it has made possible the development of religious institutions by minority faith communities such as Muslim Americans who might otherwise be denied access. Importantly, RLUIPA, also like the FHA, demonstrates that in cases of intractable bias against minorities, it is appropriate for the federal government to require local municipalities to reject exclusion and accept difference.

## ***Immigrant Integration Theory***

As of the writing of this dissertation, the literature on the engagement and integration of immigrants, and particularly Muslims Americans of immigrant origin, is rapidly expanding. Common metrics used by researchers to gauge immigrant integration are naturalization status, voter registration, political participation, stances on social issues, and, for Muslim Americans in particular, their views on terrorism and America's foreign policy. When attempting to contextualize my findings in the works of such authors as M.A. Muqtedar Khan, Amaney Jamal, and Michael Stoll, and others,<sup>621</sup> as well as recent survey research on Muslim Americans by the Pew Research Center and the Abu Dhabi Gallup Center (discussed in this work's introduction and literature review), it became apparent that I had identified a previously neglected vehicle for immigrant engagement. Other studies focus primarily on the national, macro level; the micro level of integration—in local municipalities—is often overlooked. My study clearly demonstrates that participation in land use proposals can serve as an entry activity for participation in community planning and building, as well as for contributions to local governance. In each of the three case studies I conducted, the faith community leaders were launched by their engagement in the land use review process into active public lives as spokesman for their faith communities, as local advocates for diversity and interfaith activities, and even into civic board membership. In fact, the individual who represented the Scottsdale Muslim community in its land use hearings, Dr. Zuhdi Jasser, went on to national significance as an activist against radicalization among Muslim Americans.<sup>622</sup> Dr. Jasser's ascent had begun prior to his engagement in the

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<sup>621</sup> See, among others:

Catherine Simpson Bueker. "The Limits of Political Citizenship," *Society*, Volume 46, Number 5, published online 7/7/2009. Pages 423-428.

Amaney Jamal. "The Political Participation and Engagement of Muslim Americans," *American Politics Research*, Volume 33, Number 4, 2005. Pages 521-544.

M.A. Muqtedar Khan. *American Muslims: Bridging Faith and Freedom*. Beltsville, MD: Amana Publications, 2002.

Michael A. Stoll and Janelle S. Wong. "Immigration and Civic Participation in a Multiracial and Multiethnic Context," *International Migration Review*, Volume 41, Number 4, Winter 2007. Pages 880-908.

<sup>622</sup> Dr. Jasser is the founder of the American Islamic Forum for Democracy

(<http://aifdemocracy.org/about/members.php>). He is well known for his appearances as an expert on "home grown terrorism" on Fox News and for his narration of the controversial film, *The Third Jihad*, used by the New York Police Department for training purposes with at least 1,489 police officers. See: Michael Powell. "In Police Training, a Dark

mosque review process, but his personal experience in community leadership in Scottsdale seems to have informed some of his later activism.

### ***Design Considerations for the Mosque in America***

The limited scholarship on the design of mosques in America is largely focused on documenting the aesthetic themes that have emerged in the US in late twentieth century; the antecedents for designs which draw on historical forms; the ways in which design accommodates the multiplicity of uses accommodated in American Islamic Centers; and debates over the use of traditional Islamic symbols such as the dome and minaret in diasporic settings. My research expands our understanding of the factors that influence Muslim communities' choices to pursue assimilative designs versus bold architectural statements of a structure's Islamic purpose. I have identified a number of factors that interact to drive mosque design decisions: internal debates regarding a faith community's identity; the community's financial constraints; and public and municipal responses to the proposal. The latter proved to be a strong motivator in the design choices made by the case study faith communities, and leads to the following expansion of the design theory for the mosque in America.

I maintain that a particular design phenomenon results from public and municipal response to development proposals, and that this phenomenon is shaping the evolution of mosque design in this country. I refer to it as the "Blanding Effect", and it occurs when a Muslim American community chooses a comparatively indistinct design so that their development proposal will be palatable to the public and the municipality. The Blanding Effect is manifest when faith communities purposefully select deferential design scenarios that assimilate with surrounding architecture rather than ones identifiable as serving followers of Islam. More subtly, the Blanding

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Film on U.S. Muslims," The New York Times, published 1/23/2012. Accessed 3/20/2012 via <http://www.nytimes.com/2012/01/24/nyregion/in-police-training-a-dark-film-on-us-muslims.html?pagewanted=all>

Effect also occurs when faith communities select forms and material palettes which, although identifiable as Islamic in purpose, simply parrot traditional forms from predominantly Muslim regions rather than forging innovative structures reflective of their local geographic context. In some cases, this form of the Blanding Effect meets the architectural desires of a faith community, delivering what its members themselves, from their own experiences, expect a mosque to look like. In other cases, the faith community delivers a look that it believes the public anticipates a mosque to have. Regardless of underlying motivations, I argue that the result of the Blanding Effect is that for the most part mosques in the United States, while functional and attractive, are deferential to their surroundings, are iterative of historic forms, and lack creative imagination.

To be sure, choosing historic forms may represent a diasporic community's quest for familiarity, particularly in the face of a decade-long political and social backlash from the events of September 11<sup>th</sup>. By this same logic, we should not be surprised that the American mosques erected since 2001 have been mostly subdued and assimilative. Certainly, there are architecturally notable mosques in America that are exceptions. However, most of these were erected by long-established, comparatively wealthy congregations which, when challenged by public response, are more willing and able to endure public controversies and potential legal challenges to their plans. More recently established and/or less politically empowered faith communities may not be as willing to take chances with design as those that have already secured their place in a municipality.

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### PART III: LIMITATIONS OF THE RESEARCH

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Aside from the potential biases in the research discussed in the methodology chapter and related to the predisposition of the Muslim American communities, municipal officials and development opponents who were willing to meet with me, the primary limitation of this research is its size. Time and financial constraints prevented me from undertaking more case studies, as well as a complimentary survey I had envisioned of a larger pool of faith communities. With only three case studies, and lacking a broader data set that a survey would have provided, the extent to which my findings can be generalized is bounded. More extensive data would have better contextualized my case study findings and analysis in larger patterns of conflict and response to mosque and Islamic center development proposals put forward after September 11<sup>th</sup>, 2001.

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### PART IV: POSSIBILITIES FOR FUTURE RESEARCH

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#### ***Expansion of Topic***

My research defines a clear direction for a number of different research possibilities. A larger data gathering effort as described above would increase researchers' ability to generalize findings on the topic. Additionally, expanding case studies to include Islamic Centers proposed after the 2010 Park 51 development conflict—the so-called Ground Zero Mosque—would allow a fuller understanding of the impact of that national controversy on local mosque development projects, as well as the potential influences of a nationally networked anti-Muslim effort on local opposition organizing and strategy.

This research focused on development projects proposed in suburbs by established Muslim American communities of immigrant origin, on sites located in or bordered by residential



districts. Additional studies might examine the development experiences of predominantly African American Muslim communities and of less empowered and/or recently arrived immigrant communities; faith communities developing in cities; and mosque projects in commercial, industrial or other non-residential zones. All of these would provide useful new data sets for researchers, as well as opportunities to contrast and expand the findings I present in this work. Below are recommendations for future research particular to the fields with which this dissertation intersects.

### ***Land Use Planning and Conflict Management***

In terms of broad land use concepts and practical applications for the research, I believe that my findings establish appropriate cause for theoreticians, practitioners and local communities to reconsider the traditional placement of houses of worship within municipalities. Historically, religious institutions have been located in residential districts. The logic behind this locational choice was the convenience and ease of residents, who could walk to neighborhood churches, synagogues,<sup>623</sup> and the like. The concept was born in urban neighborhoods which, because of their densities, encouraged foot travel over short distances. It was enshrined in local zoning codes, which have commonly allowed houses of worship as of right in residential districts. Throughout the twentieth century, as the nation suburbanized and evolved into a car-based culture, this model is less relevant. Further, as the functions of faith communities have expanded beyond once-weekly services to include ancillary programming provided throughout the week, the impacts of religious institutions on surrounding properties have also increased. Conflicts over the development of houses of worship in residential zones will only increase as faith communities, and particularly minority faith communities, seek to add their sacred spaces to the American landscape. Real consideration should be given to policy-based changes to

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<sup>623</sup> For some conservative Jewish communities, walking to synagogue also meets religious requirements that on the Sabbath activities considered to be work, including driving, be avoided.

zoning practice which better balance the development needs of faith communities with homeowners' rights to the reasonable enjoyment of their properties.

Turning to planning theory, future research might compare the findings of this dissertation to the literature related to multi-cultural cities and planners' role in stewarding them. Theoreticians such as Leonie Sandercock, John Forester and others<sup>624</sup> point out that fear and difference are the leading causes of conflict in land use disputes involving minorities. Historically, the planning establishment and the public addressed fear by excluding certain individuals and groups; the most obvious example is the exclusion of minority and/or low-income families and individuals from housing in particular urban and suburban districts. In the future, Sandercock and Forester propose, communities must come to terms with fears about the "other" in whatever form it takes and learn to co-exist with difference. In their vision, planners play a central role in that process through a therapeutic, dialogical approach to planning. In that approach, the public process serves a cathartic function for parties to land use disputes, offering forums in which people can share the "traumatic histories" which have formed their fears and biases. Forester posits that getting anger and prejudice off one's chest, as it were, leads to "transformative experiences," in which individuals have breakthroughs in their thinking, reject their biases, and find tolerance.<sup>625</sup> This is known as the deliberative approach to planning.

My case study findings suggest that the promise of deliberative planning theory may be difficult for practicing planners and lay adjudicators to achieve. It requires them to be highly skilled in cross-cultural communication, conflict management and consensus building, and it necessitates

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<sup>624</sup> See in particular:

Michael A. Burayidi, ed. *Urban Planning in a Multicultural Society*. Westport, CT: Praeger Publishers, 2000.

John Forester. *Planning in the Face of Power*. Berkeley: University of California Press, 1989.

John Forester. *The Deliberative Practitioner*. Cambridge, MA: MIT Press, 1999.

Leonie Sandercock. "When Strangers Become Neighbours: Managing Cities of Difference," *Planning Theory & Practice*, Volume 1, Number 1, 2000. Pages 13-30.

Leonie Sandercock. *Toward Cosmopolis: Planning for Multicultural Cities*. Chichester, UK: John Wiley & Sons, 1997.

<sup>625</sup> Forester, 1999, *op. cit.* Page 218-219.

sufficient available time for them to undertake intensive stakeholder negotiation and process management. In reality, practicing municipal planners like those in the case studies don't often have the time or resources to devote to this kind of personalized, concentrated effort, nor do they have appropriate training. Additionally, the deliberative approach assumes that planners can take sides in a land use conflict and advocate for the needs of one stakeholder over another. In the case studies, the municipal planners had to balance the needs of all stakeholders, as well as manage political influences within their municipalities. They did not hold sufficient power to independently shape consensus, let alone tolerance, among parties. Further, the planners and municipal officials in the case studies faced constraints placed on them by the legal process for public reviews, as do those in all municipalities. To avoid legal challenges to their decisions, review boards must vigilantly maintain focus on issues within their purview. Discussion of extraneous topics, including honest discussions of fears as biases as might be revealed in traumatic histories, can leave a board open to charges of arbitrary and capricious decision making.

Perhaps through additional case study research, clearer connections might be made between deliberative planning theory and planning practice. While that work proceeds, however, planners and lay practitioners must be prepared for cross-cultural conflict in the shorter term. Mosque controversies are not the only source of cross-cultural difference in American municipalities, even though they are currently catching the most headlines. As cities, suburbs, and even towns and villages continue to diversify, cross-cultural conflicts of many kinds are becoming more commonplace in the public planning process. To prepare, curriculum development must be considered for planning education which includes cross-cultural communication, conflict management and consensus building. In tandem, to serve already practicing planners and lay adjudicators, similar professional development must be designed to serve those in the field. Further, the case studies demonstrate that faith communities and their advocates can and do

play effective roles in dispute resolution around land use controversies. Planners and other municipal officials must also be trained in methods to encourage and support stakeholder-led conflict management. When stakeholders are more directly engaged with the tasks of forging acceptance, teaching tolerance and shaping mutually agreeable outcomes, it stands to reason that planners can maintain a degree of neutrality, as well as focus on resolving the land use-based challenges in which their specific expertise lies.

### ***The Religious Land Use and Institutionalized Persons Act***

It is clear that whether or not RLUIPA is openly invoked in development controversies, its mandates and penalties have helped ensure the approval of mosques—as well as the religious facilities of all faith communities—in the darkest days following 9/11 and throughout the tumultuous decade that followed. Still, as anti-Muslim sentiments rise across the country, the need for RLUIPA becomes more plain: of the eighteen RLUIPA matters “involving possible discrimination against Muslims that the Department [of Justice] has monitored since September 11<sup>th</sup>, 2001,” eight were opened between May and September 2010.<sup>626</sup> Not all of them resulted in lawsuits against municipalities; more frequently DOJ mediation brought resolution. One could conclude from these statistics that investigative involvement by the Department of Justice is often enough to quell resistance to religious land uses and avert lawsuits. But given my observations, I am not convinced that this is the whole story, and further research is needed to reveal more insightful understanding of the impacts of RLUIPA on religious property development.

Even with the uptick in DOJ investigations of mosque development reviews, the number is a relatively small percentage of those made on behalf of faith communities overall. Sixty-one

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<sup>626</sup> United States Department of Justice. *Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act, September 22, 2010*. Page 12. Published online at [http://www.justice.gov/crt/rluipla\\_report\\_092210.pdf](http://www.justice.gov/crt/rluipla_report_092210.pdf); accessed 9/30/2010.

percent of land use investigations between 2000 and 2010 were launched on behalf of Christian congregations; only 14% were made on behalf of Muslim American communities.<sup>627</sup> More discernment of these numbers is needed, but I suspect they may indicate that Muslim communities are using multiple strategies to avoid lawsuits. As a result, their land use conflicts are not progressing to that level of engagement by the Department of Justice. For example, it may be that even with RLUIPA's broad protections, increasingly hostile anti-Muslim sentiment has pressured Muslim American communities to compromise with neighbors and public officials to a degree beyond what would likely be considered acceptable by mainstream faith communities. The compromises may even burden their civil right to practice their religion freely. If that is the case, there may be an unequal application of land use laws among faith groups. That would mean that RLUIPA, and indeed the First Amendment, only protect those faith groups that feel they hold sufficient political capital to demand the enforcement of laws. Comparative research of RLUIPA investigations taken up on behalf of different religious groups is necessary. Alternatively, and more positively, it may indicate that the community education and outreach efforts of Muslim American communities and their advocates are successfully resolving conflicts to a degree that lawsuits are less necessary. More data is needed to prove this hypothesis. Finally, the RLUIPA data discussed here represents those development cases which soured to the point that federal intervention was deemed appropriate by the DOJ. More data needs to be compiled and analyzed on RLUIPA-based suits brought by faith communities themselves. Such research would likely provide more instances of the act's invocation in mosque-related disputes.

### ***Immigrant Integration Theory***

If scholars pursue engagement in local land use review processes as an avenue for and measure of immigrant integration, and particularly Muslim American integration, it will be critical to collect the personal histories of more faith community leaders who have in fact led

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<sup>627</sup> *Ibid.*, pages 5-6.

development efforts in the past decade as well as in previous decades. Comparing the trajectory of integration for these individuals will be important, and may help gauge the influence of more recent geopolitical events on immigrant engagement.

### ***Mosque Design in the United States***

A number of research avenues could be pursued related to the design of mosques in America. Although the architecture of particular mosques has been documented in case studies, there is no large-scale survey of mosque design in the United States. A comprehensive survey of existing facilities is needed to record details related to size, incorporated uses, style, the design process, and modifications made based on public response and other factors. To tie back into questions related to RLUIPA, it would be useful to compare the design compromises made by faith communities of other religious traditions to determine how similar review processes impact houses of worship overall. Additionally, deeper exploration is needed into the role of architects in mosque design. It would be particularly interesting to examine the ways that non-Muslim designers are educated on the spatial requirements and design elements of mosques, as well as the possible innovation their fresh eyes may bring to architectural and decorative programs. Turning to another aspect of innovation, I would like particularly to document mosques and Islamic Centers that have successfully incorporated regional American design elements and materials. Scholars frequently point to the Dar al Islam mosque in Abiquiú, New Mexico, (constructed of adobe with traditional southwest massing), as the quintessential example of a locally-inspired American mosque form. I would like to identify other regional examples and document the design processes that brought them to fruition. It also would be fascinating to determine whether and how, after September 11<sup>th</sup>, 2001, safety and security concerns are being incorporated into Islamic Center designs, and if in greater numbers. One might determine whether things like reduced or specially placed fenestration or perimeter fencing is being deployed to any meaningful degree. Finally, more documentation is needed on the rehabilitation

of existing structures for use by Muslims as prayer halls and social centers. The creation of sacred space from secular forms in the context of Islam should be more fully chronicled, especially in the suburbs; most existing studies of rehabilitated mosques were conducted in urban settings. Attention should be given to the building typology of the rehabilitated spaces, the faith community's resources and priorities, the question of assimilative versus recognizable design choices, and the role of public process in shaping the final form of the mosque.

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## CONCLUSION

At the core of mosque development proposals are two cherished American liberties: the right to develop private property and the right to practice religion freely. Efforts to exclude mosques from particular neighborhoods, in effect, seek to deny a minority group access to these essential rights, and they degrade the national commitment to equal access and equal protection. By contrast, the fair and equitable administration of local land use laws and the balancing of private rights with the public interest reaffirm that commitment. Federal policies like RLUIPA and the Fair Housing Act help to ensure that land use applications are adjudicated in fair and equitable ways, providing access for minorities and other groups who might otherwise be excluded. RLUIPA will ensure that mosques and other houses of worship have a place in American cities, suburbs and towns. In the perfect storm of societal variables that influence mosque reviews however, their inclusion is likely to be a difficult and uncomfortable process for the foreseeable future. Scholars and policy makers must help shape mechanisms for managing conflict and for stewarding communities through periods of change and diversification. It is my hope that the findings of this dissertation and the recommendations made based on them will provide resources for exactly this type of education, policy development and process formulation.

I am confident that over time mosques in American municipalities will be no more shocking than the Korean Methodist Churches and Buddhist Temples that bring vibrancy to our communities, or for that matter the Catholic churches and Jewish synagogues that once were the target of exclusionary efforts. In 2012, the intensity of resistance to mosques is deeply troubling; it is easy to confine one's attention to the turmoil. But if one steps back, it is possible to see that the more interesting and valuable story is what is being built along with American mosques. The process of education that their inclusion brings to municipalities is building stronger, more diverse, more tolerant communities and a civically and politically engaged religious minority.



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